

No. 13525

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United States  
Court of Appeals  
for the Ninth Circuit

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

SAN DIEGO GAS AND ELECTRIC COMPANY,  
Respondent.

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Transcript of Record

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Petition for Enforcement of Order of the National  
Labor Relations Board

FILED

JAN 7 1953

PAUL P. O'BRIEN  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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United States of America  
Before the National Labor Relations Board  
Twenty-First Region  
Case No. 21-CA-1029

In the Matter of  
SAN DIEGO GAS AND ELECTRIC COMPANY  
Employer,  
and  
COSBY M. NEWSOM, An Individual.

COMPLAINT

It having been charged by Cosby M. Newsom, an individual, that San Diego Gas and Electric Company, hereinafter called the Respondent, has engaged in and is engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, Public Law 101-80th Congress, First Session, hereinafter called the Act, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twenty-First Region, designated by the Board's Rules and Regulations, Series 6, Section 102.15, hereby issues this Complaint and alleges as follows:

I.

Respondent is a California public utility corporation engaged in supplying gas and electricity for industrial, commercial and domestic use in San Diego County, California. Its annual revenue is in excess of \$1,000,000. Respondent purchases annually

electricity, equipment and supplies originating outside the State of California valued at more than \$1,000,000.

## II.

Respondent is and at all times material herein, has been engaged in commerce within the meaning of the Act.

## III.

International Brotherhood of Electrical Workers, A. F. of L., Local Union 465, is a labor organization within the meaning of Section 2, subsection (5) of the Act.

## IV.

Respondent, by its officers, agents and employees, including without limitation, Warden, instrument engineer, Kalins, efficiency engineer, and Hathaway, superintendent, on and about January 15, January 16 and January 31, 1951, and thereafter to and including the date of the issuance of this Complaint, has interfered with, restrained and coerced its employees and is interfering with, restraining and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act by various acts and statements including but not limited to the following:

(a) Advising its employees that their union and concerted activity placed their jobs in jeopardy;

(b) Advising its employees that they could receive no benefits through the Union:

(c) Threatening employees with loss of privil-

eges should they persist in union and concerted activities;

(d) Promising greater benefits to employees and continued privileges as inducements to employees to cease their union and concerted activities.

#### V.

Respondent, while engaged in business as described above on or about January 31, 1951, did discharge and at all times since that date has failed and refused to reinstate Cosby M. Newsom for the reason that said Cosby M. Newsom had designated the union as his collective bargaining representative and had engaged in concerted activities with other employees for their mutual aid and protection.

#### VI.

Respondent, by the acts set forth in paragraph V above did discriminate in regard to hire and tenure of employment of its employees and has thereby engaged in, and is thereby engaging in unfair labor practices within the meaning of Section 8(a), subsection (3) of the Act.

#### VII.

Respondent by its acts and each of them as set forth in paragraphs IV, V and VI above, did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act and did thereby engage in and is thereby

engaging in unfair labor practices within the meaning of Section 8 (a), subsection (1) of the Act.

VIII.

The acts and conduct of Respondent as set forth in paragraphs IV, V, VI, and VII above, occurring in connection with Respondent's operations described in paragraphs I and II above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states of the United States and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IX.

The aforesaid acts of Respondent, and each of them, as set forth in paragraphs IV, V, VI and VII above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (a), subsections (1) and (3), and Section 2, subsections (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twenty-First Region, this 12th day of June, 1951, issues this Complaint against San Diego Gas and Electric Company, Respondent herein.

[Seal]            /s/ HOWARD F. LeBARON,  
Regional Director, National Labor Relations Board,  
Twenty-first Region.

General Counsel's Exhibit No. 1-E.

[Title of Board and Cause.]

## ANSWER OF EMPLOYER

Now comes the above-named employer, San Diego Gas & Electric Company, hereinafter called the Respondent, and answers the complaint of Cosby M. Newsom, as follows, to wit:

### I.

Respondent admits the allegations contained in Paragraphs I, II and III of said complaint.

### II.

Respondent denies that through its officers, or agents, or employees, or through anyone named in said complaint, or at all, on January 15 or January 16 or January 31, 1951, or on any date whatsoever, it has either interfered with, or restrained, or coerced its employees, or any of them, or is interfering with, or restraining, or coercing its employees, or any of them, in the exercise of any rights guaranteed in Section 7 of the National Labor Relations Act, by any acts or statements whatsoever. Said Respondent further denies as follows:

(a) That it is advising, or has advised, its employees that their union or concerted activity placed their job, or any of their jobs, in jeopardy;

(b) That it advised, or is advising, its employees, or any of them, that they could receive no benefits through the union;

(c) That it is threatening, or has threatened its

employees, or any of them, with loss of privileges should said employees, or any of them, persist in union or concerted activity, and

(d) That it has promised, or is promising, greater benefits to employees, or any of them, or continued privileges, as inducements to employees, or any of them, to cease their union or concerted activity.

### III.

Said Respondent further denies that on or about January 31, 1951, or at any other time, it discharged or has failed or refused to reinstate Cosby M. Newsom for the reason that Cosby M. Newsom has designated the union as his collective bargaining representative, or had engaged in concerted activities with other employees for their mutual aid and protection. Said Respondent further denies that it discharged or failed or refused to reinstate said Cosby M. Newsom for any of the reasons set out in Paragraph V of said complaint.

### IV.

Said Respondent alleges that it discharged the said Cosby M. Newsom from its employment, and refused to reinstate him because of the unsatisfactory character of his work, and for good cause, and because the services of the said Cosby M. Newsom were unsatisfactory.

### V.

Said Respondent further denies that it has at any

time interfered with, or restrained, or coerced, any of its employees in respect to their rights guaranteed under Section 7 of the National Labor Relations Act, or at all.

## VI.

Said Respondent further denies that it has by any acts discriminated in regard to hire or tenure of employment of its employees, or has engaged in, or is engaging in, any unfair labor practices within the meaning of Section 8 (a), subsection (3) of the National Labor Relations Act; and said Respondent further denies that it has by any act interfered with, restrained, or coerced, or is interfering with, or restraining, or coercing its employees, or any of them, in the exercise of their rights guaranteed in Section 7 of the Act or did thereby engage in any unfair labor practices within the meaning of Section 8(a), subsection (1) of the National Labor Relations Act.

## VII.

Said Respondent further denies that it has committed any acts whatsoever that constitute any unfair labor practices affecting commerce, within the meaning of any provisions of the National Labor Relations Act.

Wherefore, said Respondent prays that the said complaint be dismissed, and that an order be entered in favor of the Respondent and against the

said individual above-named, and finding that the allegations of the said complaint are not true.

SAN DIEGO GAS & ELECTRIC  
COMPANY,

Respondent

/s/ By A. E. HOLLOWAY,  
President

LUCE, FORWARD, KUNZEL &  
SCRIPPS

/s/ By EDGAR A. LUCE,  
Its Attorney

Duly Verified.

General Counsel's Exhibit No. 1-H.

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[Title of Board and Cause.]

INTERMEDIATE REPORT AND RECOM-  
MENDED ORDER

George H. O'Brien, Esq., for the General Coun-  
sel. Luce, Forward, Kunzel & Scripps, by Edgar A.  
Luce, Esq., for the Respondent.

Before: Howard Myers, Trial Examiner.

Statement of the Case

Upon a charge and an amended charge duly filed  
by Cosby M. Newsom, the General Counsel of the  
National Labor Relations Board, herein respectively  
called the General Counsel and the Board, by the  
Regional Director for the Twenty-first Region (Los



Angeles, California), issued his complaint on June 12, 1951, alleging that San Diego Gas and Electric Company, San Diego, California, herein called the Respondent, had engaged in, and was engaging in, unfair labor practices affecting commerce, within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act.

Copies of the complaint and the charges, together with notice of hearing thereon, were duly served upon the Respondent and Newsom.

With respect to the unfair labor practices, the complaint alleged in substance that the Respondent (1) since January 15, 1951, by means of certain stated acts and conduct, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act; and (2) on or about January 31, 1951, discharged Newsom, and thereafter refused to reinstate him, because he had designated International Brotherhood of Electrical Workers, Local Union 465, affiliated with American Federation of Labor, herein called the Union, as his collective bargaining representative and had engaged in concerted activities with his coworkers for their mutual aid and protection.

The Respondent duly filed an answer denying the commission of the alleged unfair labor practices. The answer affirmatively averred that Newsom was discharged for good and sufficient reasons.

Pursuant to notice, a hearing was held at San Diego, California, from August 1 through August 3, 1951, before the undersigned, the duly designated

Trial Examiner. The General Counsel and the Respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues was afforded all parties. At the conclusion of the taking of the evidence, the General Counsel moved to conform the pleadings to the proof. The motion was granted without objection. The parties were then advised that they might file briefs with the undersigned on or before August 20, 1951. A brief has been submitted by counsel for the Respondent which has been carefully considered.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

### Findings of Fact

#### I. The Business of the Respondent

The Respondent is a California public utility corporation, with its principal offices and plants located at San Diego, California, where it is engaged in supplying illuminating gas and electricity for industrial, commercial, and domestic use to the residents of the City and County of San Diego, California. The Respondent purchases annually electricity, equipment, and supplies originating from outside the State of California valued in excess of \$1,000,000.

The Respondent admits, and the undersigned finds, that it is, and during all times material herein was, engaged in commerce within the meaning of the Act.

## II. The Organization Involved

International Brotherhood of Electrical Workers, Local Union 465, affiliated with American Federation of Labor, is a labor organization admitting to membership employees of the Respondent.

## III. The Unfair Labor Practices

Interference, restraint, and coercion; the discharge of Cosby M. Newsom.

### A. Sequence of the pertinent facts.

For the past several years the Respondent and the Union have had collective bargaining contracts covering certain groups of the Respondent's employees; however, the instrument technicians, of which during all times material herein there were about five, were not covered by the said contracts.

In August or September 1950, Newsom<sup>1</sup> returned from Los Angeles, where he had spent a portion of his annual vacation, and told a group of his fellow instrument technicians that whereas the Respondent's top instrument technician, after three years of service, was receiving only \$1.60 per hour, the starting wage of the instrument technicians employed in the same industry in the Los Angeles area was \$1.90 or \$2.00 per hour. During the course of the discussion which then ensued, it was pointed

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<sup>1</sup>Newsom entered the Respondent's employ in February 1948, as a helper in the maintenance department. In the fall of that year, he was promoted to instrument technician Grade B and transferred to the electrical production department.

out by one of the group that the differential existing between what the Respondent paid its instrument technicians and that received by the Los Angeles area men was due primarily to the fact that the latter group was unionized. The men then discussed the plausibility of having the Union represent them as their collective bargaining representative.

For reasons not here material, the question of the Respondent's instrument technicians joining the Union lay dormant until a few days prior to January 15, 1951. Upon reporting for work that day, Newsom and two other instrument technicians (Thomas Fowler and Roy Shroble) told Harold L. Warden, instrument engineer and their immediate superior, that the instrument technicians felt aggrieved because of the low wages they were receiving in comparison to the wages paid the Los Angeles area instrument technicians employed in the same industry and therefore they were considering asking the Union to represent them for they felt that their only chance of receiving higher wages was through union representation. Warden sympathized with their plight, told them of his unsuccessful efforts to obtain wage increases for the instrument technicians, and then said that he would aid them in every way possible to further their unionization program.

Immediately after Newsom, Fowler, and Shroble had left, Warden went to the place where Ollie Webb and Tony Botwinis, the other two instrument technicians, were working and, after ascertaining

that they also were of the opinion that their only chance of securing wage increases lay in unionization, he told Webb and Botwinis that he would help them in their endeavors.

Warden then went to the office of Joseph L. Kalins, efficiency engineer and Warden's immediate superior, and apprised Kalins of the instrument technicians' plans to join the Union. Warden and Kalins then proceeded to the office of Charles R. Hathaway, superintendent of the electrical department and their immediate superior, and informed him of the instrument technicians' intentions. Hathaway requested that the instrument technicians be brought to his office later in the day. Pursuant to Hathaway's request<sup>2</sup> Warden, Kalins, and the five instrument technicians met with Hathaway toward the close of the day shift.

Hathaway, the managerial spokesman, opened the meeting by inquiring who was the employees' spokesman. He was informed that none had been selected because the employees were attending the conference solely "to listen and not to talk."<sup>3</sup> Hathaway then asked if the men's contemplated action was prompted by any grievance other than the wage question and was informed that there was none

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<sup>2</sup> Warden testified that he was instructed by Hathaway to make it clear to the men that the meeting was being called at Hathaway's "suggestion" and not at his "request". Hathaway, on the other hand, testified that he requested the meeting.

<sup>3</sup> Newsom, although not the official spokesman for the employees, "carried the ball" and did most of the talking for them.

other. Hathaway then stated that the men should have sought an increase through normal company channels instead of attempting to enlist the aid of the Union. Newsom responded by saying that he had been informed that such a course would avail the men nothing. Hathaway replied that had the men applied to him, through Warden and Kalins, for wage increases, he would have given the matter speedy consideration, whereas, because the Union's contract with the Respondent had about a year more to run, he did not believe the Union would be able to get the men any action for a long period of time. During the course of the discussion that then ensued, Hathaway pointed out to the men that, although he personally did not care whether the instrument technicians joined the Union or not, he thought the Respondent's top management might object to the instrument technicians being represented by the same union which was the representative of the other employees because of the nature of the instrument technicians' jobs, coupled with the fact that the instrument technicians had access to certain confidential papers and records. Hathaway also stated that the men should not join the Union before giving considerable thought to the possibility that by joining they might forfeit certain privileges and advantages which they were presently enjoying as non-union employees. The meeting concluded when the men stated that they would confer among themselves, discuss the matter thoroughly, and then inform Hathaway of their decision.

Immediately after the above related Hathaway

conference, the five instrument technicians met and decided to request the Union to represent them. In furtherance of this decision, Newsom composed the following petition:

This is to certify that the undersigned, being a unanious (sic) majority of the instrument technicians of the Electrical Production Department of the San Diego Gas and Electric Company, do hereby assign Local 465, International Brotherhood of Electrical Workers, A. F. of L. as the Collective Bargaining Agent for the purposes of negotiating wage scale agreement with the San Diego Gas and Electric Company.

Three copies of the said petition were typed by a notary public and then each of the copies was signed and sworn to by the five instrument technicians before the said notary public. One copy of the petition was immediately forwarded to the Respondent's vice-president in charge of operations and another copy was sent to the Union.

Upon arriving at the plant the following morning (January 16) at the usual reporting time, Newsom, Fowler and Shroble were told by Warden, to quote Newsom's testimony,

\* \* \* our (instrument technicians) position didn't look too good, and that if he (Warden) were in our shoes he would get these affairs in order because there is a possibility we may all be looking for other jobs.

Newsom further testified that Warden also said

that the instrument technicians would find it difficult to obtain employment as instrument technicians elsewhere because Warden doubted whether they had the necessary qualifications to combat the competition they would encounter; that Warden also informed them that they would meet with strong opposition in their organizational move; and that, in response to Warden's remarks, he stated that he had no intentions of looking for other employment until the instrument technicians had completed their organizational drive.

Fowler testified that during the course of the aforesaid conversation, Warden expressed doubt as to the instrument technicians' chances of getting into the Union and then stated that he hoped their affairs were in order, whereupon the men "assured him we were prepared to look for other work, if necessary."

Shroble testified that during the aforesaid conversation, Warden remarked that he "hoped our family affairs were in order so we could look for another job."

Regarding the talk he had with the aforementioned instrument technicians on January 16, Warden testified that, after being advised that the five instrument technicians had requested the Union the previous evening to represent them,

I suggested to the men that they have their facts, figures, or substantiating evidence, and so forth, in regard to their demands in very good conditions; that it would necessary for them to have a good clean case for their de-



mands for more money. I advised the men to think this over very carefully and not go up to the union with a case of demands for more money without supporting facts; that they should have all of their affairs connected with the union activities in first-class condition before they presented it, because if they should present a demand for more money and not have it substantiated with facts and figures, undoubtedly their demands would be refused. In the event their demands would be refused, it would be doubly hard for them to again open demands for more money.

Warden, under questioning by Respondent's counsel, denied he said to Newsom, Fowler, and Shroble in substance or in effect, "Your position doesn't look so good. If I were in your shoes, I would get my affairs in order as you might be looking for another job" or stated to them, "if you fellows keep this up you will be looking for another job" or "you better have your family affairs in order so you can look for another job."

The undersigned was favorably impressed with the forthright and honest manner in which Newsom, Fowler, and Shroble testified. Neither on direct examination by the General Counsel nor under cross-examination by the Respondent's counsel did they give any indication that they were attempting to suppress the true facts. On the other hand, Warden did not so impress the undersigned. The undersigned, however, was impressed by Warden's repeated denials of that which was true and his con-

stant attempts to explain that which was not true. Upon the entire record in the case, the undersigned is convinced, and finds, that Warden advised Newsom, Fowler, and Shroble on January 16, that if they continued their union activities their employment by the Respondent might be short-lived. This conclusion is strengthened when consideration is given to (1) the following testimony of Shroble given under cross examination by Respondent's counsel:

Q. And at time you didn't construe it (Warden's remarks) as being any threat that you would lose your jobs if you continued your union activity?

A. I believe I did. I believe I did a lot of thinking as to what would happen if I did continue this.

and (2) Fowler's testimony that he construed Warden's remarks to mean but one thing; namely, that the instrument technicians would love their jobs if they continued their union activities.

On January 30, Hathaway held his usual weekly departmental meeting with his two station chiefs.<sup>4</sup> By special permission, Kalins and Warden were permitted to attend.

Hathaway testified, and his testimony with respect to this meeting is in substantial accord with the testimony of the others present, that after Kalins and Warden had concluded their presenta-

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<sup>4</sup>Namely, Kenneth Campbell and Walter S. Zitlow.

tion of a proposed training program for the instrument technicians and the plan had been unanimously approved, he inquired of Kalins and Warden how the instrument technicians were performing their tasks; that Kalins and Warden replied that all were doing satisfactory work except Newsom; that he then asked each person present for his opinion of Newsom's work; that each replied it was not satisfactory and each added that in his opinion Newsom "would not become a satisfactory instrument man and should not be in the training course which was about to start"; that he then posed the question, "Should we terminate Newsom"; that each person replied in the affirmative; and that he thereupon instructed Kalins to discharge Newsom.<sup>5</sup>

On January 31, Newsom, accompanied by Warden, went to Kalins' office where Newsom was informed by Kalins, "you can apply for a transfer to another department through personnel, you can resign and probably get letters of recommendation, or we will terminate you within two weeks." When Newsom asked Kalins the reason for the aforesaid action, Kalins stated that Newsom's services were unsatisfactory and then proceeded to enumerate certain incidents which occurred during his tenure of employment. After a brief discussion regarding

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<sup>5</sup>The instrument technicians, from time to time, work at the power station over which Zitlow and Campbell have supervision and hence Zitlow and Campbell are thus afforded an opportunity to appraise the work of the instrument technicians.

the said incidents, Newsom requested Kalins to call a meeting of all the instrument technicians and to inform them of the disciplinary action and the reasons therefor. When Kalins asked the purpose of such an unusual procedure, Newsom replied that the other men "were in the middle of a move to organize" and therefore the action taken against him had "a bearing on the rest of the members of the department." Thereupon, Kalins summoned the other four men to his office, informed them of the action taken against Newsom, and then stated the purported reasons therefor. Despite Newsom's detailed explanation that the incidents cited for his seeming neglect of duty took place over a three-year period, that none was of recent date, that he previously had satisfactorily explained to Warden's superiors, at the time Warden complained to them about the incidents, that the incidents were of little or no consequence. Kalins remarked that Newsom could no longer remain in the department. Kalins refused to recede from his adamant position to rid his department of Newsom even though, in response to his invitation to the instrument technicians to express their views with respect to the said disciplinary action, Fowler "said", to quote Kalins, "something to the effect that the men were all together in this thing and that he felt in his (Fowler's) own mind that the company possibly [was] trying to fire Newsom in order to break up their attempt at unionization; that they could, therefore, take it to the National Labor Relations Board."

Newsom refused to resign or to request a trans-

fer to another department. On February 15, the Respondent, because Newsom refused to take the aforesaid action, discharged him.

### B. Respondent's Defenses

In support of its contention that Newsom's discharge was not violative of the Act, the Respondent called six witness,<sup>6</sup> each of whom was, at one time or another during Newsom's employment with the Respondent, either Newsom's immediate supervisor, or in charge of the instrument technicians' department, or a supervisor at the power station where Newsom was performing work and hence in a position to appraise his work. The testimony of the aforesaid six witnesses is summarized immediately below.

Warden testified that from the time he became Newsom's immediate supervisor in March 1949, Newsom's work was "spasmodic" and was so unsatisfactory that it did not create confidence on the part of the station chiefs or the other supervisors with whom Newsom came in contact; that in October 1949, he spoke to Newsom in private and told Newsom that complaints had been received from Zitlow about his work and then warned New-

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<sup>6</sup> Namely, Hathaway, Kalins, Warden, Campbell, Zitlow, John T. Hardway, (efficiency engineer from November 1948, until the end of August 1950 when he re-entered the United States Navy at which time he was succeeded, as efficiency engineer, by Kalins), and B. L. Stovall (assistant station chief from November 1948, until his re-entrance into the United States Navy in August 1950).

som that his work would have to improve; that despite such warning, Newsom's work continued to be unsatisfactory, and because of it he discussed Newsom's poor work with Hardway; that in May 1950, he again spoke to Newsom and again warned Newsom that his work must improve; that in September 1950, Kalins, who had succeeded Hardway as head of the instrument technicians, warned Newsom that if Newsom's work did not improve, Newsom would be discharged; that in September 1950, because Newsom's work continued unsatisfactory, he recommended to Kalins that Newsom be discharged. Warden further testified that Newsom also engaged in "horseplay" with other instrument technicians to the detriment of the department; that on more than one occasion Newsom showed disrespect toward him; that in October 1949, Newsom remained away from the plant for three days without permission and without advising him of his intended absence. In support of his testimony that Newsom performed sloppy and careless work, Warden produced, and testified with respect to, certain work records of Newsom.<sup>7</sup>

Hardway testified that in June 1950, Warden complained to him about Newsom's work and he

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<sup>7</sup> These records were discovered after Newsom had been discharged and admittedly played no part in the Respondent's determination to discharge Newsom. Therefore the undersigned finds that it would serve no useful purpose here to resolve the conflict in testimony as to whether the records disclose that Newsom's errors therein were or were not of a serious nature.

spoke to Newsom about the complaint; that he later received other complaints about Newsom's work, but took no action with respect thereto nor did he discuss them with Newsom; and that prior to August 1950, he established a system of rotation and noticed that when Newsom was paired with other technicians the work of both "fell down" and when the same technician was separated from Newsom the former's work improved. Hardway also testified that about six weeks after he had spoken to Newsom about the aforesaid June 1950 complaint of Warden, he inquired of Warden how Newsom was performing his duties and Warden replied, "All right but seemed to be slipping again."

Stovall's testimony with respect to Newsom's work consists mainly of conclusionary statements to the effect that from October or November 1948, until he re-entered the United States Navy in August 1950, he had heard of, and had made complaints relative to, Newsom's work; and that Newsom engaged in horseplay, conversed too often and too long with any person with whom Newsom came in contact.

Kalins testified that Newsom "was capable of a good deal of good natured mischief" adding, however, "it is very difficult to supply any specific instances"; that in September 1950, that because Warden had complained to him about certain unsatisfactory work performed by Newsom, he told Newsom, "there were certain things we would not tolerate; that we knew [he was] capable of better work than he was producing; that his work was sloppy

and that he could cure that by diligently applying himself"; that Newsom "excused every action that Warden accused him of and became rather excited about some of the things"; that he informed Newsom that Newsom's work must improve—or otherwise Newsom would be discharged; that he concluded the conversation by informing Newsom that Newsom's work would "be watched for a month"; that in October 1950, in his presence, he heard Warden tell Hathaway that Newsom was doing unsatisfactory work; that again in November or December 1950, he heard Warden complain to Hathaway about Newsom's poor work; and that Hathaway stated that he and Warden "should be taking some action", to which they replied, "we were waiting until a more opportune time."

Hathaway testified that the first complaint he received about Newsom was early in 1950, from Campbell; that the complaint was to the effect that the operating personnel were losing faith in Newsom's inspection work; that his investigation revealed that Newsom and Webb had been working on the complained of instruments and he instructed Hardway to put Newsom and Webb on separate jobs; that several times thereafter he inquired of Hardway regarding Newsom and each time Hardway reported Newsom "would do all right after discussing the matter with him, but that his work would then become lax and he hoped eventually [Newsom] would realize the situation and make a good man"; that Zitlow complained several times about Newsom's



work;<sup>8</sup> that each time he asked Kalins to investigate the complaints; that Kalins' reports were unfavorable to Newsom; and that on two or three separate occasions prior to January 1950, he discussed Newsom's work with Kalins and Warden and each time Kalins and Warden reported that Newsom's work was unsatisfactory.

Campbell testified that just prior to May 1950, he received repeated complaints from the operating men under his supervision regarding the ineffective manner in which the control equipment was being maintained;<sup>9</sup> that he complained to Hardway about certain horseplay which he suspected Webb and Newsom had engaged in; that after he had investigated the matter he discovered that Newsom was not involved, but "apparently he was enjoying the effects of it at the expense of the storeroom men"; that from time to time he asked Hardway, Kalins, and Warden how Webb and Newsom were "getting along" because he had recommended each of them for the job of instrument technician; and that the answers to his inquiries were to the effect that Newsom's work was "spasmodic".

Zitlow testified that while Newsom was working at his power station in 1949, he noticed that Newsom's work was lax and subject to criticism; that

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<sup>8</sup> Hathaway places these complaints as having been made several months after Newsom started working at the power station which was under Zitlow's supervision. Newsom started working there in 1949.

<sup>9</sup> This work was being performed by Newsom and Webb.

from time to time he had received complaints regarding the poor character of Newsom's work; and that he noticed Newsom spent entirely too much time in the office assigned to Newsom instead of being "at the scene of the work."

### C. Concluding Findings

The foregoing recital compels several conclusions. For example, it seems incredible that if the Respondent regarded Newsom as guilty of all the shortcomings it now attributes to him, it would have retained Newsom in its employ as an instrument technician so long as to become the oldest instrument technician in point of service, or would have offered in January 1951, to allow him to transfer to another department. Secondly, it leaves unexplained why the discharge took place within a few weeks after the instrument technicians announced their intention of joining the Union, rather than during the period when the alleged complaints occurred. Under all these circumstances, it is altogether clear that even assuming shortcomings in Newsom's work, it was not the shortcomings but his Union activities which led to his discharge. This finding is buttressed by (1) Hardway's statement to Newsom in December 1950, when the former was visiting the plant, "It looks like this war may involve us too, and if you and the rest of us return, remember this, Newt,<sup>10</sup> there is a place for you in the instrument department. I don't care whether you go back in the Merchant Marine, the Navy, or what, but there is a

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<sup>10</sup> Newsom's nickname.

place for you in the instrument department"; (2) Kalins' statement to Newsom a few days before Newsom was discharged, to the effect that if Newsom resigned it "would make things easier" and besides Newsom might be entitled to collect his vacation pay; (3) Campbell's statement to Newsom made about a week prior to Newsom's leaving the Respondent's plant on February 15, wherein Campbell told Newsom that he should not be "broken hearted" over his plight, adding that he had recommended Newsom very highly a year or so before and was sure that Newsom would make his mark in the world for Newsom was strong, versatile, and able; (4) Warden's statement to Newsom around the first of 1950, that he was assigning Newsom to certain "routine" work although he disliked to burden Newsom with that type of work, but Newsom was the only man in the department capable to do that work satisfactorily; (5) Warden's admonition to Newsom several days after January 31, that Newsom must not talk to any employee during working hours and if he discovered that Newsom was talking to any employee while at work about the disciplinary action which had been taken, Newsom would be discharged forthwith; (6) Kalins' withholding Webb's promotion to a higher classification because "the union activity had changed the picture and they didn't know what would happen until things were settled"; and (7) the lack of disciplinary action against the other instrument technicians who engaged in horseplay who allegedly performed unsatisfactory work.

Hathaway's testimony that he decided on January 30 to discharge Newsom because of the unfavorable reports he received that day is inconsistent with his testimony that sometime between January 15, the day he first heard of the instrument technicians' intention to join the Union and January 30, he informed his superior, General Superintendent Noble of the organizational plans of this group of employees.

Regarding this conversation, Hathaway testified as follows:

I told Mr. Noble these men had discussed representation by the union and that one of these men had not been satisfactory as an instrument man; that we had definitely decided he was not good and would probably ask him to terminate. I asked him whether I should postpone the action until the end of the union negotiations or whether I should go ahead and act exactly as if the union negotiations had not been brought up.

Q. Did Mr. Noble at any time advise you or instruct you to terminate Mr. Newsom's employment?

A. Yes. He said if the man's work was not satisfactory, by all means to terminate him. He left the judgment up to the department, however, as to whether he was satisfactory.

It is reasonable to infer from what admittedly transpired at the aforesaid meeting with Noble that Hathaway decided at the conclusion thereof to dis-

charge Newsom. It thus follows that what Hathaway learned about Newsom at the January 15 meeting with the station chiefs, Kalins and Warden, played no part in Hathaway's determination to discharge Newsom, for the decision to do so had been reached by him prior to the aforesaid meeting. This finding is buttressed by Hathaway's admission that prior to the January 15 meeting, he had discussed with the then business agent of the Union the contemplated discharge of Newsom and had received the business agent's assurance that Newsom legally could be discharged if the sole cause for the discharge was Newsom's unsatisfactory work.

Upon the entire record in the case, the undersigned is convinced, and finds, that Newsom was discharged because of his leadership and participation in the organizational campaign of the instrument technicians. The facts, as epitomized above, disclose the familiar pattern of unfair labor practices committed by an employer seeking to thwart the incipient organizational efforts of his employees. That the Respondent, from the start, was opposed to the instrument technicians joining the Union, the collective bargaining representative of certain other of its employees, is not open to question. Hathaway at the January 15 meeting stated to the instrument technicians that he did not believe the Respondent favored such an allegiance. Hathaway received the information regarding the Respondent's said policy shortly before the said meeting from Noble, for Hathaway testified, and the undersigned finds, that Noble told him prior to aforesaid meeting, "the

company might have certain reservations concerning the instrument men becoming members of the Union." The Respondent's antipathy toward the instrument technicians joining the Union is further disclosed when consideration is given to Warden's January 15 statements, uttered prior to the Hatha-way meeting of that day, that he would gladly aid the instrument technicians in their drive to organize and his January 16 statements that the men would meet strong opposition in their efforts to unionize and if they persisted in these efforts they might be discharged.

The undersigned further finds that by discharging Cosby M. Newsom on February 15, 1951, the Respondent, in violation of Sections 8 (a) (3) and (1) of the Act, discriminated with respect to the hire and tenure of his employment, thereby discouraging membership in the Union and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The undersigned further finds that by Warden's statement to Fowler, Newsom, and Shroble on January 16, 1951, that they might lose their jobs if they continued their Union activities, the Respondent violated Section 8(a) (1) of the Act.

#### IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent, set forth in Section III, above, occurring in connection with the operations of the Respondent, set forth in Section

I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

#### V. The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has discriminated in regard to the hire and tenure of employment of Cosby M. Newsom, it will be recommended that the Respondent offer him immediate and full reinstatement to his former or substantially equivalent position<sup>11</sup> and make him whole for any loss of pay he may have suffered by reason of the Respondent's discrimination against him by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of his discharge to the date of the Respondent's offer of reinstatement, less his net earnings during said period.<sup>12</sup>

Loss of pay shall be computed on the basis of each separate calendar quarter or portion thereof during the period from the Respondent's discriminatory action to the date of a proper offer of reinstatement.

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<sup>11</sup>The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch, 65 NLRB 827.

<sup>12</sup>Crossett Lumber Company, 8 NLRB 440.

ment. The quarterly periods, herein called quarters, shall begin with the first day of January, April, July, and October. Loss of pay shall be determined by deducting from a sum equal to that which Newsum would normally have earned for each such quarter or portion thereof, his net earnings, if any, in any other employment during that period. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other quarter.<sup>13</sup>

It will also be recommended that the Respondent, upon reasonable request, make available to the Board and its agents, all payroll and other records pertinent to an analysis of the amounts due as back pay.

The unfair labor practices found above reveal on the part of the Respondent such a fundamental antipathy to the objectives of the Act as to justify an inference that the commission of other unfair labor practices may be anticipated in the future. It will be recommended, therefore, that the Respondent be ordered to cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

#### Conclusions of Law

1. International Brotherhood of Electrical Workers, Local Union 465, affiliated with the American

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<sup>13</sup>F. W. Woolworth Company, 90 NLRB 289.



Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Cosby M. Newsom, thereby discouraging membership in International Brotherhood of Electrical Workers, Local Union 465, affiliated with the American Federation of Labor, the Respondent has engaged in, and is engaging in, unfair labor practices, within the meaning of Section 8 (a) (3) of the Act.

3. By such discrimination, by threatening its employees with discharge if they engaged in protected concerted activities, and by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in, and is engaging in, unfair labor practices, within the meaning of Section 8 (a) (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

### Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the Respondent, San Diego Gas and Electric Company, San Diego, California, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in the International Brotherhood of Electrical Workers, Local

Union 465, affiliated with the American Federation of Labor, by discriminatorily discharging any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment.

(b) Threatening its employees if they engage in union activities or in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the International Brotherhood of Electrical Workers, Local Union 465, affiliated with the American Federation of Labor, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities except to the extent that such right may be affected by a valid agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Offer to Cosby M. Newsom immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges.

(b) Make whole said Cosby M. Newsom in the manner set forth in the above section entitled "The remedy" for any loss of pay he may have suf-

ferred by reason of the Respondent's discrimination against him.

(c) Post at its plants in San Diego, California, copies of the notice attached hereto, marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Twenty-first Region, in writing, within twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order what steps the Respondent has taken to comply therewith.

It is further recommended that unless the Respondent shall within twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order notify the aforesaid Regional Director, in writing, that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

Dated this 18th day of September 1951.

/s/ HOWARD MYERS,  
Trial Examiner.

## APPENDIX A

Notice to All Employees. Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We will not discourage membership in the International Brotherhood of Electrical Workers, Local Union 465, affiliated with the American Federation of Labor, or in any other labor organization of our employees, by discriminating in regard to their hire or tenure of employment or any term or condition of employment.

We will not threaten our employees with discharge for engaging in activities protected by the aforesaid Act, or in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist the International Brotherhood of Electrical Workers, Local Union 465, affiliated with the American Federation of Labor, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities except to the extent that such right may be affected by a valid agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the National Labor Relations Act.

We will offer to Cosby M. Newsom immediate and full reinstatement to his former or substantially equivalent position without prejudice to seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay suffered as a result of our discrimination against him.

All our employees are free to become or remain members of the above-named Union or any other labor organization. We will not discriminate against any employee because of membership in or activity on behalf of any such labor organization.

SAN DIEGO GAS AND ELECTRIC  
COMPANY,  
(Employer)

Dated .....

By .....  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Affidavit of Service attached.

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[Title of Board and Cause.]

STATEMENT OF EXCEPTIONS TO INTER-  
MEDIATE REPORT AND RECOM-  
MENDED ORDER

The intermediate report and recommended order signed by Howard Myers, Trial Examiner, having been duly filed and the order transferring the case to the National Labor Relations Board having on the 18th day of September, 1951, been duly made

by the Executive Secretary, the Employer above named, in accordance with Section 10 of the Labor Management Relations Act of 1947, and Section 102.46 of the Rules and Regulations of National Labor Relations Board, Series 6, files this statement of exceptions to the above named intermediate report and order.

## I.

### General Exceptions

The Act and the regulations above mentioned invite a statement of exceptions from the party against whom the intermediate report and order is directed to the said report and the findings therein contained. The purpose of these exceptions is for the enlightenment of the National Labor Relations Board and for the further purpose of giving the respondent employer a chance to be heard in opposition to the findings before the same become final. In pursuance to that invitation, counsel for respondent deems it proper to present a frank statement of exceptions and criticism of the report and findings therein contained. This is the only procedure under which the Board can be advised of errors made by the Examiner or of a report made by him which is not justified by the evidence.

In general, the Examiner has overlooked the provisions of the Act and rules of law which are vital and fundamental in this procedure. Section 10 (c) of the Act requires that the findings of fact must be based "upon the preponderance of the testimony taken". Under this provision and the decisions of the Circuit Courts of the United States, the burden

is upon the accuser to prove his case and therefore unless the accuser fully conforms to this burden of proof the proceeding should be dismissed. The presumption is that the Employer has not violated the law and the burden of proof is therefore not upon the Employer, but upon the one who asserts the fact to prove that the discharge was because of union activity.

“It is unnecessary for an employer to justify the discharge of an employee so long as it is not for union activities. The presumption is that the employer has not violated the law, and the burden of proof is not upon the employer, but upon the one who asserts the fact, to prove that the discharge was because of union activities. \* \* \*” *N.L.R.B. vs. Union Mfg. Co.*, 124 Fed. (2d) 332, 333.

“In sponsoring the charges of Oil Workers’ international Union, No. 243, and issuing its complaint thereon, the Board was acting purely in its accusatorial capacity and in that capacity it, of course, had the burden of proof to establish before itself, in its capacity as trier, the accusations it had laid. In its capacity as accuser, the Board like any other ‘person on whom the burden of proof rests to establish the right of a controversy, must produce credible evidence from which men of unbiased minds can reasonably decide in his favor’. It cannot any more than any other litigant can, ‘leave the right of the matter to rest in mere conjecture and expect to succeed’. *Samulski vs. Menasha Paper Co.*, 147 Wis. 285, 133 N. W. 142, 145.” *Magnolia*

Petroleum Co. vs. National Labor Relations Bd.,  
112 Fed. (2d) 545, 548.

This point will be elaborated in the brief in support of these exceptions.

It is apparent from an examination of the findings and the transcript of the evidence that the Examiner has resolved all doubts in favor of the employee and wherever any conflict in the evidence occurs, that conflict has been resolved in favor of the accuser. Counsel for the Employer respectfully urges that the Examiner has ignored the overwhelming weight of the evidence to the effect that the work of the employee was unsatisfactory and that there was just cause for his discharge. In that connection, we direct attention to Section 10 (b) of the Act which provides that so far as practical the hearing before the Examiner be conducted in accordance with the rules of evidence applicable under the rules of Civil Procedure in the District Courts of the United States, and also that portion of Section 10 (c) above pointed out in regard to the preponderance of the evidence necessary to justify the order. Based upon these provisions, it is respectfully, but emphatically, urged that the findings are not based upon a preponderance of the evidence, nor justified under the evidence by the ordinary rules of evidence applicable to the District Courts of the United States.

In this connection it is also urged that the Examiner has not given proper credit to the reliability and fairness of the executives, both present and former, who have testified in this case that the dis-



charged employee was not properly qualified for his important tasks and that his discharge was justified.

The Examiner also apparently has relied upon a play of words and has enlarged the significance of the use of certain words by witnesses for the Employer.

Also, we respectfully urge that the Examiner has confused his conclusions and theories with the findings of fact and has drawn certain inferences that are not justified by a proper consideration of the evidence.

## II.

### Specific Exceptions

More specifically, the Employer excepts in detail to certain of the findings and hereinafter quotes the evidence justifying the exception. The findings are in many instances unnumbered and at times it is difficult to pick them out of the report. Counsel will, however, attempt to present the exceptions for the enlightenment of the Board with as much clarity as possible.

1. First Exception. On Page 3, at Line 33, the Examiner finds that Mr. Hathaway requested "that the instrument technicians be brought to his office later in the day". The use of the word "brought" would be unimportant were it not for the fact that the Examiner emphasizes that word later in the report for the purpose of indicating and finding that the meeting in Hathaway's office of January 15th was ordered by Hathaway and that the employees were brought unwillingly to his office. This

is an attempt to show the arbitrary action of the Employer and its attempt to break up the union activities. This is far from the facts as shown by the evidence. The testimony of Warden is this:

“Mr. Kalins and I went to Mr. Hathaway and talked to him about that and Mr. Hathaway said if the men desired a meeting with him that he would be very happy to arrange such a meeting.” (T. 134, Line 10.)

He further testified:

“It was an offer of openness on the part of Mr. Hathaway that if the men desired a meeting he would like very much to talk with them, but Mr. Hathaway’s instructions to me was not to make that a form of request from him.” (T. 134, Line 18.)

It is true that Hathaway testified that the meeting was called “at my request” (T. 320), but under the circumstances above testified to by Warden. There is nowhere any testimony that the men were brought to his office in the sense that they were required or urged to come. This is an important distinction, in view of the use made of these words by the Examiner.

2. Second Exception. At Page 3 of the report, Line 42, the Examiner finds that Hathaway then stated that the men should have sought an increase through normal company channels instead of attempting to enlist the aid of the union. This again would ordinarily be a small matter, but the Examiner uses the words “should have sought an increase” in the sense that some criticism and pres-

sure was directed against these men. The testimony of Mr. Hathaway is this:

“They told me the only reason they wanted to join the union was to obtain more money. I asked them why they had not presented the case to us, Mr. Warden, Mr. Kalins, and to me, and they said they believed they would have a better chance to get the money by going through the union than by going through the supervisors.” (T. 329, Line 13.)

This again is a rather small matter, but it is pointed out so that an unjustified impression of Hathaway's attitude should not go by unchallenged. On Page 3, Line 55, the Examiner finds that Mr. Hathaway informed the employees seeking a union representative that the “top management might object to the instrument technicians being represented by the same union which was the representative of the other employees because of the nature of the instrument technicians' jobs, coupled with the fact that the instrument technicians had access to certain confidential papers and records”. What was actually said, and to which there is no contradiction, was:

“I told them as far as I was personally concerned it didn't make much difference whether or not they were in the union because, after all, well over half of the men working for the company belonged to the union.

Trial Examiner Myers: Just keep to the conversation.

The Witness: That was mentioned, however, I said the company might have objections to them

joining the union because of the nature of the job, but that that was a question between the company and the union and I didn't have an answer on it." (T. 329, Line 24—T. 330.)

3. Third Exception. The Examiner appends a note on page 3, numbered 2, in which he cites in support of his inference that the meeting of January 15th was compelled or required by Hathaway and that the employees were compelled to walk or were brought to the office in the sense of pressure; that although Warden testified that Hathaway suggested and did not request the meeting that Hathaway, however, testified that he requested the meeting. This is the play upon words to which the Employer strongly objects. As pointed out above, there is no testimony by anybody that the employees were brought to the office in the sense of being required to come or that the meeting was requested in the sense that it implied an urging, because Mr. Hathaway used the term "request" in speaking of the meeting. The Examiner has enlarged the significance of that word beyond justification, for what Mr. Hathaway meant and said is clearly outlined by the testimony of Warden and found at Page 134 of the Transcript.

4. Fourth Exception. The most important findings made and the heart of the entire charge against the Employer is found in that finding, which is repeated, that Mr. Warden, an instrument engineer, the immediate superior of the employee, stated to three employees that the positions of the technicians "did not look too good and that if he (Warden)

were in our shoes he would get these affairs in order because there is a possibility we may all be looking for other jobs". This statement and the findings in regard thereto will be amplified later in these exceptions. The present exception deals with the finding of the Examiner in connection therewith: "That Warden also informed them they would meet with strong opposition in their organizational move." There is testimony on the part of Newsom to the effect that Warden stated that the men were "going to encounter some strong opposition in our move to organize", but the witness Newsom in answer to a question by Trial Examiner Myers, "Did he say by whom?" answered "No, sir, not to my recollection" (T. 24). This is an example of resolving the doubt in favor of the employee. The statement as made by Warden and as testified to by Newsom is so vague that it can not be said to be binding in any way upon the company or in representing any fact in relation to the policy of the company, bearing in mind that the employee here has the burden of proof. It certainly can not be said that it is proved sufficiently to justify a finding that the Employer would present strong opposition to the organizational moves.

5. Fifth Exception. Again on Page 4, Line 50, the Examiner finds that the testimony of Newsom is supported by that of Fowler and Shroble in regard to this statement of Warden. No one of the three witnesses agrees substantially in what was said by Warden. Shroble's testimony was very vague in relation to it. He said: "Well, I don't know too much,

but one statement was made, he said he hoped our family affairs were in order so we could look for another job." (T. 83.) Certainly that is too vague a statement to support any finding. Apparently Shroble means that he does not remember very much about it. He says that Warden hoped "our family affairs were in order". That is a meaningless phrase under the circumstances and is not supported by any other witness.

However, the statement of Newsom in his testimony that Warden stated that there was a possibility they would all be looking for other work is flatly contradicted by Fowler, who stated that he himself made the statement.

Fowler's testimony should be given careful consideration because he is a witness called by the employee and was one of the men involved in the union activities and can be expected to give as favorable testimony as possible for the employee. His testimony in regard to this conversation with Warden is as follows:

"Q. Did you have a conversation with Mr. Warden after the signing of General Counsel's Exhibit No. 2?

A. The following morning. We have an assignment session each morning and talk over what has been done and what needs to be done. He seemed very pessimistic as to our chances of getting into the union and in the conversation made a statement that he hoped our affairs were in order and we assured him we were prepared to look for other work, if necessary." (T. 112.)

On cross examination Fowler again testified in respect to this conversation:

“Q. (By Mr. Luce): Calling your attention to the conversation with Mr. Warden on the morning of the 16th, I believe you told us that he was very pessimistic about your chances of being taken into the union?”

A. That was one thing he said. I don't remember the exact wordage.

Q. In substance, that was what he said?

A. Yes.

Q. Then you said we assured him we were prepared to look for other work?

A. Yes.

Q. He didn't say to you that you better be prepared to look for other work?

A. No, sir.

Trial Examiner Myers: Did you make that statement that you were prepared to look for other work?

The Witness: I believe that was made exactly that way, I believe so, yes.

Trial Examiner Myers: How did you happen to say that?

The Witness: Well, from the nature of the proceeding it could only mean one thing. That we would have to get our affairs in order as far as the company was concerned, that is, financially.

Trial Examiner Myers: Meaning what?

The Witness: Meaning we could use (lose) our jobs over the union activity.

Trial Examiner Myers: What did he say when you made that remark?

The Witness: I believe the conversation was dropped there.

Q. (By Mr. Luce): You say that Mr. Warden expressed himself as being pessimistic in regard to your chances of joining the union?

A. Yes.

Q. Then, he said, 'I hope you have your affairs in good shape?'

A. Yes.

Q. Putting these two together, did you not realize that he meant he hoped you had your application in order to assist you in joining the union?

A. I didn't take it that way, no.

Q. He did, at that time, offer to help you, did he not?

A. Yes.

Q. And did he furnish you or Mr. Newsom with a job classification sheet?

A. Yes." (T. 116-117.)

This statement relied upon by Newsom and found by the Examiner to have been made by Warden is completely emphatically denied by Warden (T. 142-143.)

The evidence, therefore, that such a statement was made is extremely vague and unsatisfactory. It is partly contradicted; and considering the rules of **evidence** and the sections of the Act referred to above, it is not sufficient to justify a finding, as the accuser has not met the burden of proof. This is the very meat of the case and the Examiner should have



resolved the doubt against the accuser, as is required by law. The burden of proof was not met.

Furthermore, the statement of Warden, an employee of the company, is not binding upon the Employer and can not justify a finding that the Employer might discharge any of these employees for union activity. This will be referred to in Exception No.

Even if it be true, and we insist that the preponderance of the evidence compels the conclusion that it is not true, that Warden made the statement attributed to him, how can this be evidence that he spoke for the Employer or that the Employer had the prejudice or intentions indicated by the remarks?

In the first place, the remarks by Warden were apparently volunteered by him, as no evidence appears justifying the conclusion that the Employer might discharge these men for union activity. The evidence clearly shows that the company's labor relations were excellent; that it had had friendly dealings with the union for years; that in no other instances appeared evidence of prejudice against union activity; that the higher executives connected with this matter all made statements exactly contradictory to such conclusion. How can a statement by an instrument engineer, relatively low in the rank of executives, commit the whole organization, or justify the reinstatement of an employee. This purported statement by Warden represents the entire case for the accuser and principally on that statement the Employer is ordered to reinstate the

employee. The conclusion must have been drawn by the Examiner that because Warden made this statement the Employer has threatened to discharge employees for union activities. Here again counsel emphatically insists that the evidence does not justify the finding that the Employer did so threaten. Particularly is this true when the provisions of the Act and decisions of the court in regard to the burden of proof are considered.

6. Sixth Exception. The Examiner on Pages 4 and 5 relies upon conclusions given by Fowler and Shroble to "buttress" his findings and conclusions. At Page 5, Line 45, the Examiner quotes the testimony of Shroble as to how he "construed" the statement of Warden. Surely under no rule of law is the construction given to the statement of the Employer's engineer admissible as evidence or of any weight whatsoever. On Line 55, the construction given to Warden's remarks by Fowler is quoted as giving support to the finding of the Examiner. Under none of the rules of evidence nor under the preponderance of the testimony were such remarks considered even testimony. It apparently is emphasized by the Examiner that even though nothing might have been said by Warden to incriminate the Employer, yet if the employees gave such a construction, that is sufficient. In this case the testimony of Warden shows that his remarks could not fairly have been given such a construction, and yet they were of such a nature that an unthinking person, or one wishing to draw a hasty conclusion, might interpret them in a way that is not justified.

In this connection also, Warden's testimony should be considered. We quote from the Examiner's statement of it:

"I suggested to the men that they have their facts, figures, or substantiating evidence and so forth, in regard to their demands in very good conditions; that it would necessary for them to have a good clean case for their demands for more money. I advised the men to think this over very carefully and not go up to the union with a case of demands for more money without supporting facts; that they should have all of their affairs connected with the union activities in first-class condition before they presented it, because if they should present a demand for more money and not have it substantiated with facts and figures, undoubtedly their demands would be refused. In the event their demands would be refused, it would be doubly hard for them to again open demands for more money."

For further reference to the testimony of Warden, in which he denies emphatically that he made the statement attributed to him, see Transcript Pages 142-143.

On Page 5, beginning at Line 30, the Examiner states that he was favorably impressed by the forthright and honest manner in which Newsom, Fowler and Shroble testified. In the same paragraph he states that Warden did not so impress him. This seems to counsel for Employer to be an arbitrary position, resolving all of the conflict in favor of the accuser. In view of the denial of Warden and the contradiction of Fowler to the testimony of

Newsom, the weight of testimony is against the finding of the Examiner. The Examiner gives no reasons why he should resolve the doubt in favor of the employee. He merely says that he is impressed with the truth of the testimony of the employee and is not impressed with the testimony of the engineer of the Employer. In all sincerity counsel takes strong issue with the Examiner in this respect. There is no reason, from manner of testifying, or from the appearance on the stand, or from the testimony given, to discard Mr. Warden's testimony merely because it conflicts with that of Mr. Newsom. Apparently the Examiner resolves the doubt in favor of Newsom because of the construction given to the remarks of Warden by Fowler and Shroble, as appears on Line 40 of Page 5 of the findings. This construction by witnesses must be disregarded under all rules of law.

7. Seventh Exception. On Page 7, beginning at Line 30, the Examiner summarizes the testimony of Hardway and Stovall as to the qualifications of Newsom, the employee. There is much more to the testimony than than given by the Examiner and the full testimony is strongly against the findings made. Therefore, we summarize in more detail the statements of these two men. Bear in mind that they both are now in the military forces of the United States and are no longer employed by the company. They were both in an excellent position to judge of the qualifications and the cause for discharge of this employee and their evidence should be given careful consideration. Counsel quotes from his brief filed with the Examiner:

“John T. Hardway, former Efficiency Engineer for the company, also testified as to the inefficient work performed by Newsom. At the time of testifying he had severed his connection with the company and was a Lieutenant Commander in the United States Navy, stationed at the San Francisco shipyard. He started his employment with the company in June, 1946, as a Junior Engineer and had worked up to the position of Efficiency Engineer, to which he was promoted in November, 1948 (T. 237-238). He first observed the work of Newsom in June, 1950, and he had occasion to criticize his work at that time, after hearing complaints from Mr. Warden. Six weeks later there was another complaint from Mr. Proutt (T. 242-243). He received complaints also from Mr. Campbell, the Station Chief, as to horse play by Newsom and Webb (T. 243). He established a system of rotation and noticed that when paired with other technicians the work of both ‘fell down’ and when the same technician was separated from Newsom his work improved (T. 245). In the opinion of Mr. Hardway, Newsom’s work was unsatisfactory (T. 247, 256). It was clearly the opinion of Mr. Hardway that the work of Newsom was unsatisfactory.

‘Q. (By Mr. Luce): In your opinion was the character and quality of Mr. Newsom’s work, at the time you left, sufficient to warrant his dismissal? \* \* \*

The Witness: I won’t say it was that bad, but I will say it was unsatisfactory enough that I would have gone into a rather detailed investigation. I would have taken the time myself to have gone into

a greater detail, which otherwise was not warranted, and would have come to a final conclusion then whether his removal was justified.' (T. 247.)

“B. L. Stovall, formerly Efficiency Engineer for the company and now a Lieutenant Commander, United States Navy, stationed at the Industrial Command, United States Naval Station, in San Diego, testified that he started with the company in 1937 and gradually went up through the grades, including some years of University training, until he became Efficiency Engineer in 1946. On the way up he was Station Chief, Junior Engineer and Instrument Technician (T. 263-265). He had an opportunity to observe the work of Newsom. He first came in contact with him in October, 1948. He heard complaints from the operating department to the effect that he was doing inefficient work on the control instruments (T. 267). He observed that Newsom was given to horse play, and conversed with firemen and others who came near him entirely too much. He further showed a remarkable lack of initiative in attempting to grasp the problems involved (T. 268). He further testified that the Instrument Technician is responsible for the thermal efficiency of the plant from the fuel tank to the generator output. The job held by Newsom was one of the most important functions in the power house (T. 270). Newsom, according to the testimony of Stovall, spent hours talking to the operators and thus interfered with their work (T. 272). Lieutenant Commander Stovall described the horse play that he had observed (T. 273).”

Counsel also is attaching to these exceptions a summary of the testimony of the other executives which will be later referred to.

The first finding, under the heading "Concluding Findings", on Page 8, seems to be that the Examiner is compelled to conclude that the discharge of Newsom was for union activity because if Newsom is guilty of the shortcomings attributed to him, why was he in the employ of the Employer so long? The Examiner has overlooked the uncontradicted evidence on this point. It appears throughout the testimony that the Employer did everything possible to help Newsom. He was warned on more than one occasion of his "sloppy" work and patience was shown by the Employer. This ordinarily would be considered a good habit on the part of the Employer, but the Examiner resolves the inference against the Employer. The evidence also shows that during the summer of 1950 one of the generators at the Silver Gate Plant went out and everyone was extremely busy for the rest of the year in handling the rest of the machinery so that it could carry the additional load and no time was given to even consider the case of Newsom during that period. The testimony of Warden in that respect is as follows:

"It was following the September meeting that we lost Unit I at Silver Gate. That was a burnup unplanned, I might add, and it was 40,000 megawatts cut out from our system which made quite a hole in our total capacity.

"As you might visualize, starting the first of September, the load demand by the consumer gradually

increases by the additional use of electricity for lighting, so it was with much emphasis that we placed Unit I in primary importance getting that machine back on the line and into operating condition to the best of our ability.

“We were also saddled with the continued testing on Unit No. III and these tests were to determine modifications necessary to that unit which had only been installed, I believe, in August of 1950. It was very necessary that we obtain this information and tests and so forth, from Unit No. III so that ample time from the manufacturer might be had to produce equipment necessary to make that change.

“Q. Did you have any opportunity to observe the character of the work he had performed from September to January on the overhaul project?

A. Only in a very limited manner because of the duties required of me on Unit III tests and other related duties.” (T. 132-33.)

The question of the retention of Newsom in the employ of the Employer after the unsatisfactory work outlined in the testimony came to a head shortly before the meeting of January 30th. The educational programs of the technicians was presented at that meeting and that brought to a decision the question of whether or not Newsom would be retained, and had nothing whatsoever to do with his union activity. Mr. Warden testified:

“A. Before this particular meeting I had talked to Mr. Kalins in regard to the proposed instrument training program. We went to the meeting together to present the proposed training program. I went



as Mr. Kalins' assistant, because he is the head of the entire department and was the one to make the presentation of the proposal.

Q. When did you first discuss the instrument training program with Mr. Kalins?

A. Probably intermittently, when an occasional opportunity was involved, for a period of three or four months. Also, there had been discussions in regard to instrument training even as far back as when Mr. Hardway was efficiency engineer. \* \* \*

Q. Why did you decide to take it up at this particular meeting?

A. Because we had completed the overhaul schedule for 1950, even though the overhaul schedule did extend into the very early part of '51, in January, we completed that overhaul schedule and we had approximately the months of February, March and April in which we could conduct this training program without being interfered with by overhaul programs. However, I believe our overhaul program did start in March and not in April.

Q. And your proposal for the training program, as you presented it to the supervisors, did it then include the proposal that the instrument technicians receive their training after their regular working hours with overtime pay?

A. It was decided at this meeting that the training program would be attempted on the schedule of twice a week, one hour—between the hours of 3:00 and 5:00 in the afternoon. Our normal quitting time is 4:00 o'clock, therefore, it would be one hour on regular time and one hour at time and one-half for each meeting." (T. 206-207.)

Mr. Kalins testified:

“We prepared a proposed training plan for our instrument technicians, and after some discussion about the plan, it was unanimously decided that it would be accepted.

Then Mr. Hathaway posed the question how the instrument men were doing. Mr. Warden replied that all of them were doing well considering their experience and training with exception of Mr. Newsom. Mr. Hathaway then said, ‘We have a problem here, what shall we do with this man?’

Each man in turn, I don’t recall the order in which they spoke, but each man in turn gave his idea of what he thought of Newsom’s work, and after each man had expressed his opinion it was unanimously decided that the man—well, that is, not right—that we would be better off without him and that he should be removed from the department.

Q. Were his general qualifications, his efficiency and work discussed at that meeting?

A. Yes, there were various points mentioned. We talked about the defectiveness of his work, the attitude of the man was stressed that it was not conducive toward harmonious relationships with other operating personnel, or the maintenance people—

Q. You say it was unanimously decided the company would be better off without him. Was any decision reached as to what they should do?

A. Yes, it was decided that we would take action immediately.” (T. 288.)

Mr. Hathaway, the Superintendent, testified:

“It was finally decided that the presentation as Mr. Kalins gave it was substantially correct and we would proceed accordingly. It called for two meetings a week, one hour on company time and one hour overtime.

At that time Mr. Newsom's name was mentioned following a question of mine as to how the men were getting along, how they were doing. Each man was given a brief consideration, and Mr. Newsom was reported as not doing satisfactorily.

The question was then raised as to whether or not——

Q. Wait a minute. Tell us what was said about his work and who said it.

A. As I mentioned, I asked about each man in the group and I asked about Mr. Newsom, as to whether or not his work was satisfactory following the occurrences in the past. The answer was that it was not satisfactory and he would probably never become a satisfactory instrument man.

Q. Who said that?

A. I think I asked Mr. Kalins and Mr. Warden, and they both said that. I asked the opinion of the two station chiefs and they also agreed that he would not become a satisfactory instrument man and should not be in the training course which was about to start. That was also my opinion.

Q. Go ahead and tell us what was said.

A. That is what was said. Each man expressed his opinion that Mr. Newsom was not a satisfactory man and we should not waste his time or the time

of the other men or the training instructors in the course. We could not leave him out of the course as an instrument man, and as we had decided something would have to be done about him, we took that action at that time.

Q. Was anything else said?

A. Substantially, that Mr. Newsom would be terminated; that he should be offered the opportunity of transfer, or, in case he didn't choose either—

Q. Will you tell us what was said and who said it? Don't give us your conclusions that it was decided. Tell us what was said and how the meeting terminated.

A. I asked each man, 'Should we terminate Newsom'? That was the substance of the question. I asked them individually. The answer was also given, individually, that we should. I concurred with that myself.

I instructed Mr. Kalins to give Mr. Newsom a notice to that effect." (T. 332-333.)

From the above and other testimony in the case, it is apparent that there was justification for the delay in terminating Newsom. It happened to coincide with his union activities. This fact, that is the unfortunate timing, seems to have had convincing force with the Examiner and to have brought about his conclusion. It is unfair, however, in view of the above testimony, to say that because the discharge occurred at the time of union activities it was due to this activity. If the other testimony in the case is considered, it will appear that the union activity

did not have any weight in the decision to terminate Newsom. To find that it did is purely an inference and conclusion drawn by the Examiner on suspicion alone. It is not supported by the evidence. This is an important consideration and counsel respectfully suggests that the evidenc be reexamined. Counsel also assumes that the Board has before it the brief of the Employer which was filed before the Examiner and the statement of the evidenc with appropriate references is there contained and should be carefully considered.

8. Eighth Exception. The final finding made by the Examiner is found on the bottom of page 8 and the top of page 9 of the Findings and is as follows:

“Under all these circumstances it is altogether clear that even assuming shortcomings in Newsom’s work, it was not the shortcomings but his Union activities which led to his discharge.”

He then declares that the finding is “buttressed” by certain evidence which he finds in the record. This finding and the subdivisions of the finding constituting the buttress are now considered in their order.

(A) Subdivision 1 of the finding mentions a remark made by Mr. Hardway to Newsom in December, 1950, indicating, according to the Examiner, that Hardway assumed Mr. Newsom’s work was satisfactory. It is to be noted that this alleged statement was made in December, 1950. At that time Mr. Hardway was no longer employed by the company but was passing through the plant with

some relatives and made the remark in passing. (Transcript 44).

On the other hand, the testimony of Mr. Hardway quoted above shows his opinion of the qualifications of Newsom. The remark has only little value in support of the charge here.

(B) The Examiner finds some significance in the statement of Mr. Kalins to Mr. Newsom that if he resigned it would make things easier. It is difficult to comprehend the significance of this statement as supporting the finding. The statement was made after the time Mr. Newsom was notified of the termination of his employment. We find reference to this statement at the bottom of page 153 and the top of page 154 of the transcript. The resignation had apparently been referred to on the day that Newsom was notified of his discharge. Testimony of Warden in that respect is as follows:

“A. Yes, the following day, either the following day or second day following, I contacted Newsom to see if he had made a decision and what it was. I said it was important to me to know if he had decided to resign or be discharged so that we might put into operation the mechanics necessary in writing up his discharge; that if it were a resignation there was the fact of making payment for his vacation which he had not received as yet. If it was a discharge the accounting would necessarily be different from a resignation.”

“Q. What did he say?”

“A. He said, ‘I cannot resign.’”

In fact, the Examiner’s finding is that the state-

ment in regard to resignation was made "a few days before Newsom was discharged." In fact, the question about resignation was brought up after Newsom was discharged.

"Q. (By Mr. O'Brien): During the two weeks, did you have any further conversations with Mr. Kalins?"

"A. Yes, I did."

"Q. Approximately when?"

"A. It was within a day or so of my termination. He came to me and told me he couldn't see why I didn't resign because that would make things much easier; that there was some strong possibility I might be able to collect my vacation pay if I did resign, and he couldn't see why I didn't do that."

(C) The same may be said of subsection 3 of the finding. Campbell's statement referred to therein was made after Newsom was discharged and about a week prior to his leaving the plant. What Campbell said according to Newsom, was this:

"Mr. Campbell seemed quite concerned. He had recommended me quite highly a year or so prior and he seemed quite concerned that I was broken hearted over this. He wanted me to face the world with a stiff upper lip and get started in some other field. He said I was strong and versatile, able, and no doubt make my mark in whatever field I chose. He said I should get started on it right away." (Transcript 41).

Then follows some other comforting remarks by Campbell. These remarks fairly considered indicate

only a kindly feeling on the part of Mr. Campbell and an effort on his part to encourage Mr. Newsom to find other employment that would be congenial. It would seem to be only a kindly act on the part of a superior officer and the words have no significance at all in support of the finding.

(D) In Subsection 4 on page 9 the Examiner relies also upon a statement attributed to Warden that he was assigning Newsom to certain routine work because he was the only man in the department capable to do that work satisfactorily. It must be noted, according to the finding of the Examiner, that this remark was made "around the 1st of 1950", a year before Newsom was terminated. It is difficult to understand in what way this remark would "buttress" the findings that the discharge of Newsom was for Union activities.

(E) In Subsection 5 on page 9 the Examiner places significance in the fact that Warden admonished Newsom several days after his discharge that he must not talk to the employees and that if he did so his discharge would take effect forthwith. How this can buttress or support any finding that discharge was for Union activities is not clear to Counsel. The statement made by Warden to Newsom, however, is not susceptible to the inference placed upon it by the Examiner. According to Newsom, the statement of Warden was as follows:

"I was also told by Mr. Warden the next day that the company didn't have to give me two weeks, that they could let me go immediately and they would do so if it looked like I was going to circu-



late among the men and tell them about all of this.”  
(Transcript 39, line 14).

Quite naturally, Warden did not want the discharged employee spending his time discussing his troubles with his fellow employees. What is wrong with the Employer giving this admonition to a discharged employee? Certainly there is nothing to prevent his agitating on his own time. Here again, even giving the worst construction possible, such evidence does not support a finding that the discharge was for Union activities.

(F) In Subsection 6 the Examiner relies to some extent upon his statement that Kalins withheld Webb's promotion to a higher classification because “the Union activities had changed the picture and they didn't know what would happen until things were settled.” The Examiner presents the inference that the Employer had withheld Webb's promotion because of Union activity. This is far from the fact and the evidence should be examined in that respect.

“Q. Tell me, did Mr. Kalins say that Mr. Webb had been considered for an “A” rating, but that Union activities had changed the picture and the company didn't know what would happen until things were settled?”

“A. He didn't say the company, he was talking about himself personally.”

“Q. That they didn't know what would happen until things were settled?”

“A. Yes.”

Clearly, the remark has no significance and Kal-

ins was only voicing his own thoughts. It appears, however, that Webb was given his Grade "A" rating.

(G) In Subsection 7 the Examiner places significance and support for his finding on the supposed fact that there was a lack of disciplinary action against the other instrument technicians who engaged in horseplay and who allegedly performed unsatisfactory work.

Inasmuch as the Examiner gives no citations from the transcript for such statements it is difficult to accept to them. However, the other instrument technicians referred to were also engaged in Union activities equally with Newsom and were not discharged. Horseplay was only one small item referred to in the causes for Newsom's discharge. There is no evidence of any unsatisfactory work on the part of the other technicians that would in any way justify a discharge. The conclusion of the Examiner in Subsection 7 is wholly unsupported by any evidence.

The above is the evidence which the Examiner claims supports and buttresses his finding that the discharge of Newsom was not for his "shortcomings" but his Union activities. Considering the well-known rules of law laid down by the act itself by the decisions, it is difficult to understand on what theory it could be said by the Examiner that the above statements of evidence made his finding that the discharge was for Union activities "quite clear." This statement does not constitute a preponderance of the evidence with respect to the

cause of discharge nor does it sustain the burden of proof. The finding itself to which we here accept is the vital one in the whole proceeding in that the Examiner has found that even though the testimony is overwhelming that there were causes for the discharge based on poor work. Nevertheless, the Examiner finds that Union activities was the real cause. Counsel earnestly submits that this all important finding rests, according to the Examiner, upon a very thin inference from the evidence, and certainly said inference constitutes nothing more than a suspicion.

9. Ninth Exception. Some significance by the Examiner is placed upon the conversation testified to by Hathaway between himself and Mr. Noble, and the Examiner claims that this conversation shows that Hathaway had determined upon the discharge of Newsom before the important meeting of January 15th. There is nothing in the evidence which justifies this finding. The Examiner does not give the proper emphasis to the testimony of Mr. Hathaway.

It will be noted that Hathaway asked Mr. Noble whether he should go ahead and act exactly as if Union negotiations had not been brought up, and the answer was: "yes, he said if the man's work was not satisfactory, by all means to terminate him. He left the judgment up to the department, however, as to whether he was satisfactory." (Transcript 337.)

This testimony does not at all support the Trial Examiner's conclusion. It does indicate clearly that

the Employer's attitude was not to consider the Union activities at all. This directly negatives the findings of the Examiner. How can the Examiner find from this that Mr. Hathaway had decided to discharge Newsom. Certainly, there is no such evidence. Yet, the Examiner concludes "it is reasonable to infer from what admittedly transpired before said meeting with Noble that Hathaway had decided at the conclusion thereof to discharge Newsom." This finding is wholly unjustified and unsupported.

10. Tenth Exception. The Examiner continues at the top of page 10 to find contrary to all the evidence that the meeting of January 15th did not determine the discharge of Newsom, but that Hathaway had determined before that meeting. The only evidence to support this finding seems to be the conclusion of the Examiner that prior to the meeting of January 15th Hathaway had discussed with the Business Agent of the Union the contemplated discharge of Newsom. Even though such be the fact and that Hathaway was considering the discharge based upon the reports to him of his department heads, it does not in any way prove that the discharge had been determined or that the discharge was for Union activities. The meeting of January 15th as shown by the evidence and the testimony of all those present is clearly contrary to the finding of the Examiner. It may be that the discharge of Newsom was considered before the meeting of January 15th. As a matter of fact, it had been considered for a long time,

and the warning had been given to Newsom. Therefore, there seems to be no significance in the statement of the Examiner that Hathaway discussed the discharge with the Business Agent of the Union. Here again is a very weak and thin line to attach a finding of such importance.

11. Eleventh Exception. The Examiner on page 10, line 9, makes the general finding that he is convinced that Newsom was discharged because of his leadership and participation in the organizational campaign of the instrument technicians. In coming to this conclusion, however, the Examiner fails to give any importance to the overwhelming testimony of Newsom's superiors as to his unfitness. This seems to be legally an arbitrary finding not based upon the evidence.

It is not true that the respondent from the start was opposed to the instrument technicians joining the Union. The most that was said at any time by anyone in authority was that the matter would have to be determined at the next contract negotiations, and that the company held a mental reservation in regard to giving its consent. All of the executives stated to the technicians and repeated the same in evidence that they did not stand in the way or make any objections to the action of the technicians at that time. This will be later pointed out in a further exception.

12. Twelfth Exception. On page 10, line 17, the Examiner finds that Hathaway at the January 15th meeting stated to the instrument technicians that he did not believe the respondent favored such

an allegiance. According to the Examiner's statement all that Hathaway stated was that Noble told him "the company might have certain reservations concerning the instrument men becoming members of the Union." This is far from showing any objection on the part of the company. Noble in the same conversation quoted above stated that Hathaway should consider the problem as though there had been no Union activities. It was repeatedly stated to these men that the question of their affiliation with the Union was a matter to be determined between the Union and the men, and between the company and the Union at time of contract negotiations.

13. Thirteenth Exception. This exception is directed to the general finding of the Examiner that the real cause for the termination of Newsom was his union activity and not his "shortcomings" or his lack of qualifications to do the work. This general finding is the crux of the whole case. The Examiner supports this finding on statements of the evidence above referred to which fall far short of supporting it. In this exception counsel directs the attention of the Board to the fact that five witnesses testified to the meeting held on January 30th at which the qualifications of Newsom were carefully discussed and the decision made that he should be discharged because of the lack of qualifications and an accumulation of incidents justifying the discharge. These witnesses were the executives of the company in charge of the departments in which Newsom worked and were impartial and able witnesses. They were the ones best

able to judge of his qualifications. There does not appear any reason at all why the testimony of these witnesses should be totally disregarded and the Examiner should rely wholly upon the conflicting evidence of a chance remark by a technical engineer.

What happened at this meeting of January 30th is best described by the testimony of Mr. Charles R. Hathaway, the Superintendent of Electrical Production for the company. His testimony has already been cited and is found beginning at Page 331, Line 15, to Page 333, Line 20. The persons present at this meeting, in addition to Mr. Hathaway, were:

Mr. Harold L. Warden, Instrument Engineer, whose testimony begins at Page 121 of the Transcript and ends at Page 177;

Mr. Joseph L. Kalins, Efficiency Engineer, whose testimony begins at Page 280 of the Transcript and ends at Page 323;

Mr. Kenneth Campbell, Station Chief at Station B, whose testimony begins at Page 349 of the Transcript and ends at Page 356;

Mr. Walter S. Zitlaw, Station Chief at the Silver Gate Plant, whose testimony begins at Page 368 of the Transcript and ends at Page 376.

All of these men testified that the qualifications of Mr. Newsom were carefully discussed and it was unanimously agreed that he should be discharged for inefficiency. Each of these witnesses stated emphatically that his union activities had nothing to do with the decision to terminate him.

Each of these witnesses testified that they had no objection to Newsom's union activities and each testified that in general they had no objection to the activities of their employees in respect to becoming members of a union.

In addition to the above, Mr. John T. Hardway, formerly Efficiency Engineer of the company and now a Lieutenant Commander, U. S. N., whose testimony begins at Page 237 of the Transcript and ends at Page 256, and Mr. B. L. Stovall, formerly Efficiency Engineer for the company but now a Lieutenant Commander, U. S. N., whose testimony begins at Page 263 of the Transcript and ends at Page 273, both testified to the inefficiency of Newsom and as to their observation of his poor work and of the complaints made against him.

It is impossible in the limits of this statement of exceptions to set out all of the testimony given by those men. We will attach to this statement, however, an appendix which constitutes a summary of this testimony.

All of the above witnesses have been found by the Examiner to be unworthy of belief and against their testimony he finds that the discharge of Newsom was for union activity, in spite of the positive testimony given by the above witnesses that it was not. Certainly the preponderance of the evidence is against the finding of the Examiner. Surely the burden of proof is not met by the accuser.

This matter is extremely important to a great



public utility producing electricity for a great community and in justice to it the Board should re-examine the testimony contained in the Transcript. Counsel again asserts as strongly as possible that the findings of the Examiner are not supported by a preponderance of the evidence as the law requires that they should be. The state of the evidence as above pointed out is such that the overwhelming evidence is opposed only by a conclusion of the Examiner based upon suspicious circumstances.

14. Fourteenth Exception. The Examiner has not considered in his findings the testimony of Warden that Newsom at one time signed the name of "Webb," another technician, to a report without authority or consent. While the discovery of this improper signature by Newsom was made after it was decided to discharge him, it is proof, however, of the general course of conduct of Newsom and supports the opinion of his superior officers. The testimony of Warden in regard to this incident is as follows:

"A. The details, as best that I have them, were that in the early part of the month of February, 1951, I was checking the routine record which is maintained at Silver Gate. I came across the alarm check record of 1950 and there was a column on that record dated 1/23/51, under which was the name "Webb," and below the name a complete alarm check record. I took this record out to the instrument shop where Newsom was working and asked him what about it. He looked at it and

took out an erasure and said, 'I put that down just for laughs.' I removed the paper from Newsom and brought it back into the office.

Trial Examiner Myers: This was in 1951?

The Witness: Yes.

Trial Examiner Myers: When was the date of the job?

The Witness: The alarm check of the job was dated 1/23/51 and that was placed on a 1950 record.

Trial Examiner Myers: On a 1950 record?

The Witness: Yes.

Trial Examiner Myers: What does that mean?

The Witness: This particular record is a large sheet with sufficient columns and spaces across it to record one year's record.

Trial Examiner Myers: I don't understand what you mean.

The Witness: On this record sheet at the top of each column there are sufficient spaces to show one year's record on a sheet of this nature.

Trial Examiner Myers: How often are the notations put in the record?

The Witness: It is our desire to have these made on a monthly basis, however, during overhaul periods of heavy work we have to necessarily give routine a secondary consideration and sometimes there is one or two months in running throughout the year that we do not have time to make the alarm checks.

Trial Examiner Myers: When do you think Newsom put Webb's name down, '50 or '51?

The Witness: I checked that record as of December 1950 and it wasn't there at that time, so it was sometime following the December date.

Trial Examiner Myers: And you discovered that in February?

The Witness: The very first part of February, at which time it is my job to check the record and make sure it is complete and up to date." (T. Pg. 155, Line 6, to T. Pg. 156, Line 24.)

Newsom attempted to explain away this false signature, but his testimony was very vague and unconvincing. He attempted to deny that he had signed the name of Webb, but finally admitted that it looked like his signature and he would not say that he had not made it. (T. 422, Line 15, to T. 423, Line 6.) See Exhibit 2 (Transcript pg. 174).

15. Fifteenth Exception. The respondent further excepts to the findings on the ground the Examiner in arriving at his conclusion has completely ignored the fact shown by the evidence that this Employer has enjoyed good labor relations for some time and has constant dealings with representatives of labor and has not objected to its employees joining the union. Its record, therefore, does not indicate that it would be likely to discharge an employee for union activity. (T. 329, Line 24.)

Mr. Hathaway further testified as follows:

"Q. Mr. Hathaway, you say, then, in your department a large portion of the men are members of the union?

A. That is correct, yes.

Q. Is there any reason that you know of now,

either in company policy or in your policy, that would require you or would cause you to discharge a man because he was engaged in union activity?

A. Certainly not.

Q. To your knowledge, has it ever been done by your company?

A. It has not been done since I have been with the company, certainly not.

Q. Has there ever been any discouragement given to the men to discourage them from joining the union?

A. No.

Q. Would you say that in deciding to terminate Mr. Newsom's employment that his union activity was in any degree a contributing factor?

A. No, it was not." (T. 337, last line to T. 338, Line 17.)

This is positive, undisputed testimony by a high official of the company, whose sworn testimony should not be brushed aside by a mere conclusion or suspicion. Certainly it was not given any weight whatsoever by the Examiner, who virtually found Mr. Hathway's testimony was not truthful.

16. Sixteenth Exception. Respondent also objects in general to the finding and conclusion of the Examiner that the discharge of Newsom was for union activities, on the ground that the undisputed evidence shows that Newsom was previously warned of his inefficient work and was told that he would be discharged if it did not improve. This happened long before there was any union activity. The testimony of Warden is as follows:

“A. At this time I went to Mr. Kalins, who had become efficiency engineer due to Mr. Hardway being on military leave, and explained that we had had one previous meeting with Newsom; that I had also spoken to Newsom once myself before that.

My recommendation to Mr. Hathaway was that he either transfer or remove him from the instrument department.

Q. Was your recommendation to Mr. Hardway or Mr. Kalins?

A. To Mr. Kalins.

Q. Then what happened?

A. Mr. Kalins went to Silver Gate with me, we called Newsom into the office, and Mr. Kalins started questioning Newsom in regard to his work output, the sloppiness in nature, the lack of exactness and preciseness of the work.

Mr. Newsom, again, asked for specific examples, one of which was quoted in regard to the gauges installed on Unit II in such a manner that they were not satisfactory as far as operations were concerned. That was offered as one of a number of instances. It was not the only one, it was just a specific instance.

During this meeting in which Kalins, Newsom and myself were present, the point was brought up that if Newsom's work did not become satisfactory and remain so, it would be necessary for him to leave the department. Mr. Newsom questioned me twice on that, asking me what I meant, and I said that he would be through, that he could not longer

work in the instrument department. I repeated that twice during the meeting.

Q. What was his attitude at that time as expressed by his words?

A. Following that meeting a very definite appearance of measured output.

Q. Before you come to that, what was the attitude of Mr. Newsom at this meeting of you, Kalins and Newsom in regard to his showing of respect to you?

A. A considerable disrespect." (T. 128, Line 11, to T. 129, Line 19.)

Mr. Kalins testified to the same thing. (T. 280-284)

17. Seventeenth Exception. The Employer introduced into evidence Exhibit 2 (Transcript 178). This exhibit consisted of photostatic copies of the records made up by Newsom. In numerous instances these records showed serious inefficiency on the part of Newsom, sometimes omissions to enter proper readings of the instruments, sometimes confusion as to the figures entered, sometimes careless work, all of which showed inefficiency and carelessness of Newsom. This is serious on the part of an instrument technician.

These particular records were not discovered until after Newsom was terminated. At the hearing the Examiner indicated that he would not give serious consideration to these records because of the

fact that they were discovered after the discharge. The records, however, have considerable weight in that they prove that Newsom was inefficient and that the judgment of his superiors was good. They are certainly proof of his inefficiency and indicate a just cause for his discharge. The Examiner has entirely overlooked these records and has given them no consideration at all. This, counsel believes, is error on his part and that this Board should give those records consideration.

The testimony in regard to these records and the explanation of the errors appearing thereon made by Newsom is given by Mr. Warden and commences on page 158 and continues to page 178.

Counsel assumes that the exhibit is before the Board and can be examined by the Board in connection with the testimony of Newsom.

### Conclusion to Exceptions

Respondent, referred to sometimes herein as Employer and sometimes as the company, has presented in all sincerity these exceptions to the findings. Again, it is strongly urged that against overwhelming and uncontradicted testimony of executives of the company, entitled to respect and credence, are the suspicions of the Examiner, based wholly upon the passing remark of Engineer Warden and upon the fact that the termination of Newsom came about soon after he commenced union activities. The chance remark of Warden is not proved by the evidence, as there is a sharp conflict. The

remark would not be binding upon the company in any event. It is true that the discharge came at an unfortunate time, but as the cases which will be hereafter quoted in our brief hold, the fact that any employee is engaged in union activities is not protection against discharge for cause. The support for the Examiner's finding seems to be only this suspicious fact.

The re-employment of Mr. Newsom as an instrument technician would put him in a position of importance where only efficient and loyal employees should work. The officials of this company are charged with the responsibility for the upkeep and maintenance of this great electrical production plant. The order proposed would inflict upon this company and its officials a great deal of harm. Certainly it should not be made without careful consideration, such as is required by the decisions of the Courts of the United States.

Therefore, based upon the evidence in this case, it is sincerely urged by the respondent company that the evidence be re-examined and reconsidered and that the findings proposed by the Examiner be not made the final findings of this Board.

Counsel for the respondent filed with the Examiner a brief on behalf of the respondent employer. There is much contained in that brief that should be considered by this Board and counsel believes it would be enlightening. Counsel also assumes that the brief is on file before the National Labor Relations Board and respectfully suggests



that it be examined by the Board before ruling on these exceptions.

Respectfully submitted,

LUCE, FORWARD, KUNZEL &  
SCRIPPS

/s/ By EDGAR A. LUCE,  
Attorneys for Employer.

## APPENDIX

Summary of testimony of Harold L. Warden, Instrument Engineer; John T. Hardway, former Efficiency Engineer; B. L. Stovall, former Efficiency Engineer; Joseph L. Kalins, Efficiency Engineer; Charles R. Hathaway, Superintendent of Electrical Production; Kenneth Campbell, Station Chief at Station B; Walter S. Zitlaw, Station Chief at Silver Gate.

In considering this testimony, it must be first remembered that the discharged employee was an Instrument Technician who was charged with the duty of keeping the instruments in the great power plants in working order. The power plants in question were Station B and the Silvergate plants in San Diego, and had a capacity of 150,000 kilowatts and 100,000 kilowatts, respectively, and supplied the City and County of San Diego with electricity. The responsibility of these men was very great and it was exceedingly important that the work of inspecting these instruments be done well and efficiently. No one can deny the right of the employer under these conditions, who has the responsibility of fur-

nishing a great city with its electrical power, to discipline its employees charged with the maintenance of the instruments on its powerful and tremendously expensive machines. Those charged with the duty of maintaining the efficiency of these two great plants were in the best position to judge the qualifications of Newsom and all have testified that his work was unsatisfactory and that he should be taken off the job. No one should dare to substitute their judgment for the judgment of these men. No one has attempted to dispute their testimony. No evidence was produced to indicate any lack of sincerity or ability on the part of these men, or of any personal prejudice on their part, against either Newsom or his union activities, except the scintilla, if it may even be that much, of evidence above cited.

The person in the best position to judge the work of Mr. Newsom was his immediate superior, Harold L. Warden, Instrument Engineer, who first went to work for the company in 1947 and was promoted to Instrument Engineer in March, 1949. He outlined the importance of the work of the Instrument Technicians, of which Newsom was one. (Transcript 121.) He stated that was "of such a nature that errors, lack of accuracy, being lackadaisical, or, perhaps you might say, not caring too much or not paying strict enough attention to the job, can be very detrimental in the matter of station efficiency. It even could, under hazardous operation, cause plant damage or personnel damage." (T. 122.) He testified that Newsom's work was "spasmodic", (T. 124) and was so unsatisfactory that it did not create

confidence in his work on the part of operators or Station Chiefs or Supervisors (T. 124). In October, 1949, he spoke to Mr. Newsom in private and told him that complaints had come from the Station Chief at Silvergate, Mr. Zitlaw, and that he (Newsom) should improve on his work (T. 125). The work of Newsom continued to be unsatisfactory and his inefficiency was discussed with Mr. Hardway, the Efficiency Engineer, and later with Mr. Kalins, who succeeded Mr. Hardway. Mr. Hardway spoke to Newsom in May, 1950 (T. 127) and after that, in September, 1950, Mr. Kalins, Efficiency Engineer, and Warden informed Mr. Newsom of the unsatisfactory character of his work and among other things told him that unless his work improved, he would be terminated (T. 129-130). Mr. Warden testified that he recommended the discharge of Newsom as early as September, 1950 (T. 128). Mr. Warden further testified that on more than one occasion Mr. Newsom showed disrespect towards him, thus injuring the cooperation and unanimity of the department (T. 129-130; 151-152).

Mr. Warden further testified that on once occasion, without a good explanation, Newsom signed the name of Webb, a fellow technician, to an inspection report and also entered it on the wrong sheet (T. 155; T. 174); that Newsom was absent once for three days without notification or explanation (T. 157).

The witness Warden produced photostatic copies of the records of the company showing sloppy and careless work by Newsom on the instrument records.

Some of these records, as will be shown in the testimony, were discovered after the discharge of Newsom was agreed upon, but show the character of his work before the discharge and were offered as examples. These records were received in evidence and were designated "Respondent's Exhibit 2". The explanation of these records will be found in the transcript at pages 158 to 177. On page 4 of the exhibit are several blanks, showing that no reading was taken at the required time. On page 5 are several blanks where no reading was entered. Later Mr. Newsom testified that the blanks meant that the same figures were read, although this explanation does not fit in with the rest of the page. On page 6 of the exhibit are numerous other blanks. On page 7 it shows that the check test is carelessly done, as the "P.S.I.", or "Pounds per square inch" should have been changed to "Inches Mercury". The figure 7.6 does not apply to "P.S.I." Further explanation of this is contained in Mr. Warden's testimony in the transcript, page 165. On page 8 the same error occurs and it will also be seen that there was sloppy entry of figures, as the top figure "279" in the encircled portion should have been dropped down a line. Other errors on this page are shown by the testimony on page 169 of the transcript. Errors also occur on page 9 shown in the circles and explained in the testimony of Warden at page 170. The errors on pages 11 and 12 are explained in the testimony of Warden on page 174 of the transcript. On page 12 of Exhibit 2, in the last column, appears a heading "1-23-51"; however, the rest of the columns are

obviously for the year 1950 and the top heading is for the year 1950. Under the figures "1-23-51" can be seen faintly the word "Webb". This is the signature signed by Newsom and which he attempted to erase when confronted with it by Warden (T. 174). On page 13 of the exhibit are also certain blanks that indicate that certain tests were not made, although on Exhibit 1 is a check showing that they were made (T. 174). Pages 14 and 15 of the exhibit also show errors which are testified to (T. 177).

John T. Hardway, former Efficiency Engineer for the company, also testified as to the inefficient work performed by Newsom. At the time of testifying he had severed his connection with the company and was a Lieutenant Commander in the United States Navy, stationed at the San Francisco shipyard. He started his employment with the company in June, 1946, as a Junior Engineer and had worked up to the position of Efficiency Engineer, to which he was promoted in November, 1948 (T. 237-238). He first observed the work of Newsom in June, 1950, and he had occasion to criticize his work at that time, after hearing complaints from Mr. Warden. Six weeks later there was another complaint from Mr. Proutt (T. 242-243). He received complaints also from Mr. Campbell, the Station Chief, as to horse play by Newsom and Webb (T. 243). He established a system of rotation and noticed that when paired with other technicians the work of both "fell down" and when the same technician was separated from Newsom his work improved (T. 245). In the opinion of Mr. Hardway, Newsom's work was unsatisfac-

tory (T. 247, 256). It was clearly the opinion of Mr. Hardway that the work of Newsom was unsatisfactory.

“Q. (By Mr. Luce): In your opinion was the character and quality of Mr. Newsom’s work at the time you left, sufficient to warrant his dismissal?” \* \* \*

The Witness: I won’t say it was that bad, but I will say it was unsatisfactory enough that I would have gone into a rather detailed investigation. I would have taken the time myself to have gone into a greater detail, which otherwise was not warranted, and would have come to a final conclusion then when whether his removal was justified.” (T. 247.)

B. L. Stovall, formerly Efficiency Engineer for the company and now a Lieutenant Commander, United States Navy, stationed at the Industrial Command, United States Naval Station, in San Diego, testified that he started with the company in 1937 and gradually went up through the grades, including some years of University training, until he became Efficiency Engineer in 1946. On the way up he was Station Chief, Junior Engineer and Instrument Technician (T. 263-265).

He had an opportunity to observe the work of Newsom. He first came in contact with him in October, 1948. He heard complaints from the operating department to the effect that he was doing inefficient work on the control instruments (T. 267). He observed that Newsom was given to horse play, and conversed with firemen and others who came near him entirely too much. He further showed a

remarkable lack of initiative in attempting to grasp the problems involved (T. 268). He further testified that the Instrument Technician is responsible for the thermal efficiency of the plant from the fuel tank to the generator output. The job held by Newsom was one of the most important functions in the power house (T. 270). Newsom, according to the testimony of Stovall, spent hours talking to the operators and thus interfered with their work (T. 272). Lieutenant Commander Stovall described the horse play that he had observed (T. 273).

Joseph L. Kalins was the Efficiency Engineer with the company at the time of the termination of Newsom's employment. He also went up through the grades with the company and became Efficiency Engineer in September, 1950, succeeding Mr. Hardway. He testified that he first questioned Newsom's ability in May or June of 1950 (T. 280). He first discussed the matter with Newsom in September, 1950, after hearing several complaints from Mr. Warden. In the conversation he went over the complaints with Newsom in the presence of Mr. Warden. Newsom excused every action about which there was a complaint and became very angry (T. 283-284); and at that time he was definitely informed that unless his work improved "he would be through" (T. 284). Later on, when Newsom was notified of his termination or transfer, the witness Kalins definitely outlined to Newsom what the grounds of complaint were and summarized them as follows:

1. That he does not have ability to get along with supervisors;
2. That he had no desire to become a leadman, to set a pace for the other men or show leadership, does not produce in accordance with ability;
3. He was producing a measured output to just barely get by;
4. His workmanship was unsatisfactory and sloppy and jobs were uncompleted and he had no dependability;
5. He did not fit into the department setup. (T. 291.)

These reasons were discussed in detail and some examples were given. Immediately Newsom demanded that the causes be stated to all of the instrument group, as he wanted to put Warden on the carpet before the men (T. 292). At that meeting, according to Mr. Kalins, Mr. Newsom had a monopoly of the floor and cited many childish reasons why Warden did not like him (T. 292). He also excused himself by indulging in criticism of his superior, Mr. Warden (T. 293).

Kalins also testified that there had been great improvement in the work of the department since Newsom had left it. As he expressed it, "The department, as a whole, was more capable, was more hardworking, more harmonious, and all around a much better department" (since Newsom left) (T. 296). Mr. Kalins also attributed an improvement to the fact that Newsom had left. He detailed a conversation that he had had with Superintendent Hathaway, in which he had reported the inefficiency



of Newsom at several meetings (T. 322-323). He further stated that the attitude of Newsom was very bad and it was one of the factors in his discharge (T. 321).

Mr. Kalins emphatically stated in his testimony that he had no objection whatsoever to Newsom's union activities (T. 305).

Charles R. Hathaway, Superintendent of Electrical Production for the employer, testified that he had been 10½ years with the company and started as Efficiency Engineer; he had had a great deal of experience prior thereto, and this he outlined in his testimony (T. 324). The first complaint he received about Newsom was early in 1950, from Mr. Campbell, Station Chief at Station B, which was to the effect that the operating personnel were losing faith in the accuracy of the meters and of the inspection by Newsom (T. 324). Hathaway decided that it was best to separate Newsom and other men and this rotation program was carried out (T. 325). Later, Zitlaw, Station Chief at the Silver Gate Station, also complained of the inefficient work of Newsom (T. 325). Kalins and Warden detailed to the witness that Newsom had given trouble in every combination they had made and there was much discussion among the three in respect to Newsom (T. 327).

Mr. Hathaway testified in detail to the meeting of January 15th, where the matter was discussed with the Instrument Technicians who were requesting union recognition (T. 328-329). Also, he testified of the meeting of January 30th, where the dismissal of Newsom was decided upon. Mr. Hathaway testified

at some length as to the requirements of the job and the necessity for harmony and cooperation (T. 340), and gave it as his opinion that Newsom was not qualified to properly do the work (T. 338). He emphasized the fact there had been much better harmony in the department since Newsom left (T. 339). It was his opinion that the supervisors leaned over backwards to give Newsom a chance and showed no prejudice against him. He relied quite strongly upon the criticisms of Newsom given by Zitlaw and Campbell (T. 343-344).

Mr. Hathaway stated very emphatically that the union activity of Newsom did not affect the matter in any way (T. 335); that it did not matter to him personally whether they were members of the union or not, as most of the men under him were members of the union (T. 330). He stated that he had discussed the matter with Mr. Noble, General Superintendent, and that Mr. Noble had instructed him to consider the elimination of Newsom from the department exactly as though there had been no union activity on his part (T. 337).

Mr. Kenneth Campbell testified that he was Station Chief at Station B. He outlined his rather extensive experience in similar work prior to employment by the company (T. 349-350). He stated that just prior to May, 1950, he received repeated complaints from the men under him as to the work of Newsom (T. 352); that the work of Newsom continued to be unsatisfactory (T. 353); that after May, 1950, he noticed a sort of inactivity on the part of Newsom and that he seemed to have no

definite objective ahead and indulged in considerable horse play (T. 354); in his opinion the work of Newsom was "spasmodic"; that in his opinion it was for the best interests of the company that he be terminated (T. 365). Mr. Campbell, like the other witnesses, stated emphatically that his judgment as to Newsom was not in any way affected by his union activities (T. 356).

Mr. Walter S. Zitlaw testified that he was the Station Chief at Silver Gate; that he started with the company in 1941; that he had been Chief at the Silver Gate Station since 1943; that prior to his employment by the company he had held a similar position with the Phelps-Dodge Company (T. 368). He noted that the work of Newsom had become lax and was subject to further criticism (T. 369); that it continued bad and that many complaints were received about him (T. 370); that he noticed that very little work was executed by Newsom and that the work assigned to him was not being completed (T. 372). His general opinion of the work of Newsom was about as follows:

"He has exceptional ability when it is work to his interest. If he finds interest in the work, he can do a good job and he can do it with dispatch. The work we have is not the type of work that will hold his interest over any period of time, and he doesn't fit that picture at all. \* \* \* I support it is his temperament and attitude towards the job. He doesn't seem to accept the job for what it is. \* \* \* Because of the failure to continue to prosecute each assignment that was his, each responsibility that

was his, he would let them go by for lesser things or for just laughs, doing nothing." (T. 373.)

He noted also that Newsom spent more time in his office than he should have (T. 377); that he was guilty of other inefficient work than described above (T. 379-381). Mr. Zitlaw also, like the others, testified emphatically that the union activity of Mr. Newsom had no part and was given no consideration, in the opinion of Zitlaw, and of his decision that he should be eliminated from the department (T. 376).

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United States of America

Before the National Labor Relations Board

Case No. 21-CA-1029

In the Matter of

SAN DIEGO GAS AND ELECTRIC COMPANY

and

COSBY M. NEWSOM, An Individual.

DECISION AND ORDER

On September 18, 1951, Trial Examiner Howard Myers, issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board<sup>1</sup> has reviewed the rulings of the Trial Examiner and find that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings,<sup>2</sup> conclusions, and recommendations of the Trial Examiner, with the following additions and modifications.

The Trial Examiner has found, and we agree, that complainant Newsom's discharge was violative of Section 8 (a) and (1) and (3) of the Act. In reaching this conclusion, unlike the Trial Examiner, we have considered certain work records of Newsom's which were introduced in evidence by the Respondent in support of its contention that Newsom's work was unsatisfactory.

These records consist of standard forms prepared by the Respondent for use by its instrument tech-

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<sup>1</sup>Pursuant to the provisions of Section 3 (b) of the Act, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

<sup>2</sup>The Intermediate Report contains an inadvertent error which is hereby corrected. In concluding that Hathaway, immediately after his conference with Nobel, decided to discharge Newsom, the Trial Examiner states, "It thus follows that what Hathaway learned about Newsom at the January 15th meeting with the station chiefs, Kalins and Warden, played no part in Hathaway's determination to discharge Newsom, \* \* \*." The date of this meeting, correctly set out elsewhere in the Intermediate Report, was January 30, not January 15, 1951.

nicians in conducting tests on generators, turbines, boilers and other equipment in the Respondent's generating plants. Harold L. Warden, Newsom's immediate supervisor, testified at some length at the hearing concerning alleged errors and omissions on Newsom's part in executing these forms. Thereafter, Newsom was recalled as a witness and explained in a convincing manner each of the alleged mistakes mentioned by Warden. A careful examination of the entire record convinces us that, even if Newsom made the comparatively few errors and omissions on the forms attributed to him by the Respondent, such errors and omissions would not have misled the skilled engineers for whom the forms were executed. Accordingly, we reject the Respondent's contention that Newsom's work records constitute persuasive evidence that he was an unsatisfactory employee. In the circumstances we must conclude, as did the Trial Examiner, that Newsom's discharge was motivated by his union activity, and thus was violative of Section 8 (a) (1) and (3) of the Act.<sup>3</sup>

### ORDER

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, San Diego Gas and Elec-

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<sup>3</sup>In so ruling we do not rely upon the Trial Examiner's finding, for which we find no persuasive support in the record, that Hathaway admitted that he had discussed the proposed discharge of Newsom with the Union's business agent some time before January 15, 1951.

tric Company, San Diego, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in the International Brotherhood of Electrical Workers, Local 465, affiliated with the American Federation of Labor, by discriminatorily discharging any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment;

(b) Threatening its employees for engaging in union activity or in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the International Brotherhood of Electrical Workers, Local Union 465, affiliated with the American Federation of Labor, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, to refrain from any and all such activities except to the extent that such right may be affected by a valid agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Cosby N. Newsom immediate and full reinstatement to his former or substantially

equivalent position without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of the discrimination against him, in the manner provided in the Intermediate Report;

(b) Upon request make available to the National Labor Relations Board or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records, and reports, and all other records necessary to analyze the amount of back pay due;

(c) Post at its plant in San Diego, California, copies of the notice attached to the Intermediate Report marked Appendix A.<sup>4</sup> Copies of said notice to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof,

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<sup>4</sup>This notice, however, shall be, and it hereby is, amended by (a) striking from line 3 thereof the words "The Recommendations of a Trial Examiner" and substituting in lieu thereof the words "A Decision and Order," and (b) changing the last full paragraph to read "All our employees are free to become, remain, or refrain from becoming or remaining, members in good standing of the above-named Union, or any other labor organization, except to the extent that such right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act." In the event this Order is enforced by a decree of the United States Court of Appeals, there shall be inserted in the notice before the words: "A Decision and Order," the words: "A Decree of the United States Court of Appeals Enforcing."



and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Twenty-first Region, in writing, within ten (10) days from the date of the receipt of this Order what steps the Respondent has taken to comply herewith.

Signed at Washington, D. C., March 31, 1952.

PAUL M. HERZOG, Chairman,  
ABE MURDOCK, Member,  
PAUL L. STYLES, Member,

[Seal] NATIONAL LABOR RELATIONS  
BOARD.

Affidavit of Service attached.

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In the United States Court of Appeals  
For the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

SAN DIEGO GAS AND ELECTRIC CO.,  
Respondent.

**CERTIFICATE OF THE NATIONAL  
LABOR RELATIONS BOARD**

The National Labor Relations Board by its Executive Secretary, duly authorized by Section 102.87, Rules and Regulations of the National Labor Relations Board—Series 6, hereby certifies that the doc-

uments annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board, entitled, "In the Matter of San Diego Gas and Electric Company and Cosby M. Newsom, Individual," Case No. 21-CA-1029 before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Order designating Howard Myers Trial Examiner for the National Labor Relations Board, issued August 1, 1951.

(2) Stenographic Transcript of Testimony taken before Trial Examiner Myers on August 1, 2, and 3, 1951, together with all exhibits introduced into evidence.

(3) Copy of Trial Examiner Myer's Intermediate Report (annexed hereto to Item No. 5), and Order Transferring Case to the Board, both dated September 18, 1951, together with affidavit of service and United States Post Office return receipts thereof.

(4) Respondent's Statement of Exceptions to Intermediate Report and Recommended Order received October 8, 1951.

(5) Copy of Decision and Order issued by the National Labor Relations Board on March 31, 1952, with Intermediate Report annexed thereto, together with affidavit of service and United States Post Office return receipts thereof.



Appearances: George H. O'Brien, 111 West Seventh Street, Los Angeles, California, appearing on behalf of the General Counsel of the National Labor Relations Board. Luce, Forward, Kunzel & Scripps, By: Edgar A. Luce, 1220 San Diego Trust & Savings Building, San Diego, California, appearing on behalf of the San Diego Gas & Electric Company, the Respondent. [1\*]

PROCEEDINGS

\* \* \* \* \* [3]

COSBY M. NEWSOM,

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: Cosby M. Newsom.

Trial Examiner Myers: Will you kindly spell your full name for the reporter?

The Witness: C-o-s-b-y M. N-e-w-s-o-m.

Trial Examiner Myers: Mr. Newsom, where do you live?

The Witness: 4276 Altadena Avenue.

Trial Examiner Myers: San Diego?

The Witness: Yes.

Trial Examiner Myers: You may be seated, sir. Mr. O'Brien, you may proceed with the examina-

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\* Page numbering appearing at bottom of page of original Reporter's Transcript of Record.

(Testimony of Cosby M. Newsom.)

tion of Mr. Newsom who has been duly sworn.

Q. (By Mr. O'Brien): Did you formerly work for the San Diego Gas & Electric Company?

A. I did. [7]

Q. Approximately when were you first employed? A. February, 1948.

Q. In what department?

A. Electrical production.

\* \* \* \* \*

Q. (By Mr. O'Brien): Your job was what?

A. Helper in the maintenance forces.

Q. How long did you work as a maintenance helper, approximately? A. Eight months.

Q. Your next job was what?

A. That of instrument technician, Grade B.

Q. How did you obtain that job?

A. Through job bid procedure.

Q. Can you describe what the job bid procedure was?

A. When there is a vacancy in another department, personnel posts a notice of that vacancy and invites bids from company employees throughout all departments for the job.

Q. By the way, as a maintenance helper did you belong to any labor organization?

A. The I.B.E.W.

Q. The International Brotherhood of Electrical Workers? A. Yes.

Q. Do you know whether or not they had a contract with the [8] company covering maintenance electricians and helpers? A. Yes, they did.

(Testimony of Cosby M. Newsom.)

Q. And do you know whether or not that contract covered the work of the instrument technicians?

A. I was informed it did not.

Q. Approximately when did you become an instrument technician, Grade B?

A. I believe it was in October, 1948.

Q. Who was your immediate superior?

A. Mr. Charles Geiger.

Q. Would you spell that name, please?

A. G-e-i-g-e-r.

Q. What was his title, sir?

A. Instrument Engineer.

Q. To whom was Mr. Geiger responsible?

A. Mr. Stovall.

Q. What was Mr. Stovall's title?

A. Efficiency Engineer.

Q. And to whom was Mr. Stovall responsible?

A. I believe the Assistant Station Chief, Mr. Campbell, at that time.

Q. Mr. Campbell, C-a-m-p-b-e-l-l?      A. Yes.

Q. The same Mr. Campbell sitting in the back of the hearing room? [9]      A. Yes.

Q. Coming back to Mr. Geiger, besides your own work, the work of what other employees did he supervise?

A. The work of Mr. Warden at Silver Gate and Mr. Porter at Station B.

Q. Mr. Warden's title is what?

A. I believe it was Instrument Technician A at that time.

(Testimony of Cosby M. Newsom.)

Q. Where was he stationed?

A. At Silver Gate.

Q. Is that a steam electric generating plant?

A. Yes.

Q. Mr. Porter was stationed where?

A. Station B, primarily.

Q. Is that a steam electric generating plant?

A. Yes.

Q. Do you know whether Mr. Porter was an A or B technician?

A. He was a B technician.

Q. Is he in the hearing room now? A. Yes.

Q. The same Mr. Porter? A. Yes.

Q. Then, was Mr. Warden the only instrument technician A when you entered the department?

A. Yes.

Q. Were you and Mr. Porter the only instrument technicians B [10] when you entered the department? A. Yes.

Q. Calling you attention to the fall of 1950, who was in charge of the instrument technicians at that time? A. Mr. Warden.

Q. His title then was what?

A. Instrument Engineer.

Q. Under Mr. Warden there were no instrument technicians A? A. No, sir.

Q. The instrument technicians B were whom?

A. Bob Cole—

Q. Do you know approximately when he transferred to the department, if he did?

A. Transferred into the department?

(Testimony of Cosby M. Newsom.)

Q. When he became an instrument technician?

A. No, sir, I don't. It was 10 months prior to the fall of 1950.

Q. It was after you became a technician?

A. Yes.

Q. Do you know approximately when he transferred out of the department?

A. In the fall of 1950 he transferred.

Q. To what job?

A. As junior engineer.

Q. Definitely a promotion? [11] A. Yes.

Q. You have named Bob Cole. Who else?

A. Ollie Webb.

Q. As far as his service in the department was concerned, was he junior or senior to you?

A. He was junior in seniority.

Q. Who else?

A. Thomas Fowler, Pete Shroble and Cosby Newsom.

Q. Again, calling your attention to the fall of 1950, was there any discussion, among the group you have just named, of differences between wages paid at the San Diego Gas & Electric Company and other concerns? A. Yes.

Q. When?

A. In August or September. [12]

\* \* \* \* \*

Q. What discussion did you have with relation to your wage scales with your fellow employees?

A. Well, I informed the fellows that during my vacation I had made some contacts in Los Angeles



(Testimony of Cosby M. Newsom.)

and investigated the wage scales of men doing comparable work.

Where our top man after three years of service to the company was making \$1.60 an hour, they were hiring people in Los Angeles at \$2.00 or \$1.90 an hour.

In the course of our discussion it was pointed out by someone that the only difference was that up there the jobs were covered by unions. They were highly organized and immediately there was a spontaneous move to petition the union. We decided against it, as a group, collectively, because of the fact that Thomas Fowler and Pete Shroble were quite new in the department and didn't, at that time, feel that they were instrument technicians. It was decided to postpone it until they had gained more confidence and a better understanding of the job.

Q. Later, did you announce your decision to any representative [13] of management?

A. No, sir.

Q. At some later time did you announce to any of the supervisors that you have named that you were considering such action?

A. No, sir. That is, not until the next year.

Q. You say, "not until the next year." Approximately, when?

A. When our present action began?

Mr. O'Brien: I have asked the reporter to mark this document for identification as General Counsel's Exhibit No. 2.

(Testimony of Cosby M. Newsom.)

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 2 for identification.)

Q. (By Mr. O'Brien): I show you General Counsel's Exhibit No. 2 for identification, which bears the date of January 15, 1951, and I ask you if that helps to fix the date when you had some discussion with some supervisor about the union?

A. That is the date.

Q. To whom did you speak?

A. The first person to know about it was Mr. Warden.

Q. The same Mr. Warden?                      A. Yes.

Q. Mr. Warden's job then was that?

A. Instrument Engineer.

Q. About what time of day?

A. In the morning, 7:30. [14]

Q. Was that your usual starting time?

A. Yes.

Q. Who was present?

A. Mr. Warden, Thomas Fowler and Pete Shroble.

Q. What was the conversation?

A. We told Mr. Warden about our plans.

Q. Who did the talking?

A. I was primarily the spokesman that morning. I told him we had discussed it and all of the instrument technicians decided it was necessary for us to get more money for our work, so we decided to organize and join the union.

(Testimony of Cosby M. Newsom.)

I told him we had decided to ask the I.B.E.W. to represent us. I explained to him, also, what I had learned in Los Angeles, previously, as to wage scales there and wage scales here. He agreed. He said that we were underpaid. He also said it does no good to go up and ask them for anything, because he himself had done that and it is a futile method. Those were his words.

\* \* \* \* \*

Q. (By Mr. O'Brien): What else was said in that conversation with Mr. Warden? [15]

A. We just left it more or less at that and everyone agreed it was a good idea. We left it at that and we thought the next move would be up to us and the union.

Q. At which station did this conversation take place? A. Silver Gate.

Q. Did you go on about your work then?

A. Yes, we did.

Q. By the way, what were your duties on January 15, 1951, specifically?

A. I believe I was engaged in the routine work at Silver Gate station.

Q. Had your duties been changed shortly before January 15th?

A. We had just completed an overhaul and my duties were changed from working on the overhaul to the resumption of the routine that had been interrupted for the overhaul.

Q. When were you told of this change in your duties? A. Prior to January 1st.

(Testimony of Cosby M. Newsom.)

Q. By whom? A. H. L. Warden.

Trial Examiner Myers: January 1st, of this year?

The Witness: Yes.

Q. (By Mr. O'Brien): About January 1 of 1951, what was your conversation with Mr. Warden on that occasion?

A. He called me into the office and said that the overhaul is over and we are months behind in our routine work. He said [16] it is quite important that we get our departmental machinery back in operation for the routine work and he told me that he hated to burden me, his senior men, with routine. However, he said, I was the only fellow in the department that could handle the routine successfully at those stations.

Webb was not familiar with the routine at Silver Gate and that I would be required to do the routine for three months during which time Mr. Ollie Webb would work with me on the routine at Silver Gate. At the end of that three months, Mr. Webb would take over the routine at those stations, having been broken in at Silver Gate by me.

Q. Now, bringing you back to January 15, 1951, after your conversation with Mr. Warden in the morning, did Mr. Warden speak to you again later in the day about that subject matter? A. Yes.

Q. About when?

A. Sometime in the afternoon he returned to Silver Gate from Station B and called all of us together.

(Testimony of Cosby M. Newsom.)

Q. The three of you being Fowler, Pete and Newsom?

A. Yes. He said we were to have an interview with Mr. Hathaway at Station B.

Q. I don't believe Mr. Hathaway has been identified. Will you tell me what his job is, or was then?

A. He is superintendent of electrical production.  
\* \* \* \* \* [17]

Q. Have you told us all of what Mr. Warden said to you three technicians on the afternoon of the 15th?

A. He said we have an interview with Mr. Hathaway. He wants to see us about our move.

Q. What happened then?

A. Well, the three of us entered Mr. Warden's car and he drove us to Station B where we were interviewed by Mr. Hathaway.

Q. Is Mr. Hathaway's office in Station B?

A. Yes.

Q. Who was present?

A. Those present were Mr. Hathaway, Joseph Kalins—

Q. Just a minute. Do we have Mr. Kalins identified? Will you spell his name, sir?

A. K-a-l-i-n-s.

Q. His job was what?

A. Efficiency Engineer?

Q. Would he be under Mr. Hathaway?

A. Yes.

Q. Would he be over Mr. Warden?

A. Yes.

(Testimony of Cosby M. Newsom.)

Q. You have mentioned Mr. Hathaway and Mr. Kalins, who else was present? [18]

A. Tony Botwinis.

Q. He is an instrument technician?

A. He was at that time.

Q. Who else?

A. Thomas Fowler, Pete Shroble, Ollie Webb and Cosby Newsom.

Q. Was Mr. Warden present? A. Yes, sir.

Q. What was the conversation?

A. Mr. Hathaway asked us who our spokesman was and I spoke, saying that we were all of the same mind and that we had been told or advised as to the futility of asking for raises; that our intentions were to join the union.

Mr. Hathaway said there are other ways to get money rather than joining the union. He said, for instance, they were contemplating the rate of A technician and that two of us had been recommended by Mr. Hardway in letters which he left prior to his re-entering the Navy. [19]

\* \* \* \* \*

The Witness: Mr. Hathaway said that two letters had been left for two of the men in the department when Mr. Hardway went into the Navy. He said they were considering making A technicians of some of the men in the department.

He outlined some of the advantages we have by not belonging to the union.

Q. (By Mr. O'Brien): What did he say?

A. He said there are possibly advantages to not

(Testimony of Cosby M. Newsom.)

belonging to the union that you men are not aware of, that is what he said. He went on to say perhaps we weren't eligible to join the union because some of our work might be classified as confidential.

He said that certain classes of employees, such as supervisors, office personnel and plant guards are not allowed to join the union, and that we might fall in a similar category.

\* \* \* \* \*

The Witness: Well, I told Mr. Hathaway that we would take into consideration the things he had said and that the [20] fellows would meet immediately after this meeting and decide what course to take. Then that meeting broke up.

Q. (By Mr. O'Brien): What did the instrument technicians do next?

A. We had a meeting among ourselves and—  
Trial Examiner Myers: When?

The Witness: Immediately after the meeting with Mr. Hathaway and decided that we would petition the union to become our collective bargaining agent.

Q. (By Mr. O'Brien): Then what did you do?

A. We went to a Notary Public and drew up this statement.

Q. Referring now to General Counsel's Exhibit No. 2 for identification.

Who is responsible for the language and type-writing on that statement?

A. I am responsible for the language; the Notary Public is responsible for the typing.

(Testimony of Cosby M. Newsom.)

Q. Did the Notary Public type it, is that what you are saying? A. Yes.

Mr. Luce: May I see that, please?

Q. (By Mr. O'Brien): How many copies were made, sir? A. Three.

Q. Is General Counsel's Exhibit No. 2, for identification, the copy which you retained?

A. Yes. [21]

Q. And were all of the signatures made before the Notary Public in your presence? A. Yes.

Q. Did each person sign three copies?

A. Yes.

Mr. O'Brien: I offer General Counsel's Exhibit No. 2 in evidence.

Trial Examiner Myers: Are there any objections to the paper going into evidence?

Mr. Luce: No objections.

Trial Examiner Myers: There being no objection, I will ask the official reporter to kindly mark this document as General Counsel's Exhibit No. 2.

(The document heretofore marked General Counsel's Exhibit No. 2 for identification, was received in evidence.)

#### GENERAL COUNSEL'S EXHIBIT NO. 2

This is to certify that the undersigned, being a unanimous majority of the instrument technicians of the Electrical Production Department of the San Diego Gas and Electric Company, do hereby assign Local 465, International Brotherhood of Electrical Workers, A. F. of L. as the Collective Bargaining



(Testimony of Cosby M. Newsom.)

Agent for the purposes of negotiating wage scale agreement with the San Diego Gas and Electric Company.

/s/ COSBY M. NEWSOM

/s/ OLLIE E. WEBB

/s/ THOS. R. FOWLER

/s/ A. P. BOTWINIS

/s/ ROY A. SHROBLE

Subscribed to before me this 15th day of January, 1951.

[Seal] /s/ E. J. HULTBERG,  
Notary Public.

My commission expires 6/11/54.

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Q. (By Mr. O'Brien): With regard, again, to General Counsel's Exhibit No. 2, what was done with the first copy of that, sir?

A. It was sent to Mr. Sherwin, head of the Chairman of the Board of the San Diego Gas & Electric Company by registered mail.

Q. Did you mail it? A. Yes.

Q. You say Mr. Sherwin. Is he Chairman of the Board? A. I believe so. [22]

Trial Examiner Myers: What is his official capacity with the company?

Mr. Luce: Mr. Sherwin is vice president in charge of operations.

Trial Examiner Myers: What is his first name?

Mr. Luce: Emory D. Sherwin.

Trial Examiner Myers: Thank you.

(Testimony of Cosby M. Newsom.)

Q. (By Mr. O'Brien): What was done with the second copy?

A. It was delivered into the hands of Mr. Jewett of the I.B.E.W.

Trial Examiner Myers: What do you mean when you say the first copy and the second copy, Mr. O'Brien?

The Witness: I believe this is the original copy here, but one of the two copies.

Trial Examiner Myers: One was sent to Mr. Sherwin and the other was sent to the I.B.E.W.?

The Witness: Yes.

Q. (By Mr. O'Brien): The following day did you have any conversation with Mr. Warden?

A. Yes, we did.

Q. I mean, with regard to the same general subject.

A. Yes, the next morning we had a conversation.

Q. About what time?

A. At 7:30 in the morning.

Q. Who was present? [23]

A. Mr. Warden, Fowler, Shroble and myself.

Mr. Luce: Was that second name Kalins?

The Witness: No. Mr. Warden, Mr. Fowler, Mr. Shroble and myself.

Q. (By Mr. O'Brien): At which station?

A. At Silver Gate.

Q. What was the conversation?

A. Mr. Warden said that our position didn't look too good, and that if he were in our shoes he would get these affairs in order because there is a

(Testimony of Cosby M. Newsom.)

possibility we may all be looking for other work.

Mr. Luce: Wait just a second. Let's get that down.

The Witness: He also asked us if we considered ourselves able to compete in the field as instrument technicians. He said he didn't believe we could.

He said we were going to encounter some strong opposition in our move to organize, and I told him that——

Trial Examiner Myers: Did he say by whom?

The Witness: No, sir, not to my recollection.

Trial Examiner Myers: What did you tell him before I interrupted you? You said "and I told him——"

The Witness: Well, I told him that as far as looking for another job was concerned, my method would be to complete what we had started, meaning our move to organize; that I would carry that through and then look for another job if my [24] position there was untenable. That is about the sum of it.

Q. (By Mr. O'Brien): Then did you go on about your work? A. Yes, we did.

Q. Are you still working for the San Diego Gas & Electric Company? A. No, sir.

Q. And when was the last day that you worked?

A. February 15, 1951.

Q. Did you quit voluntarily or were you discharged? A. I was discharged.

Q. When did you receive your notice of discharge? A. About February 1st.

(Testimony of Cosby M. Newsom.)

Q. How did that notice come to you, sir?

A. I had checked in for work that morning and Mr. Warden told me to keep myself in the clear. He said, "You and I are going down to talk to Kalins."

Trial Examiner Myers: To whom?

The Witness: Mr. Kalins, the efficiency engineer. After an hour or so he said, "Let's go," and we entered his car and drove to Station B.

There was little small talk——

Q. (By Mr. O'Brien): This is in Station B in whose office?

A. In the office of Mr. Kalins.

Q. And who was present besides Mr. Kalins, yourself and Mr. Warden? [25]

A. Nobody. It is the general office, the desks are narrow there.

Q. What was the conversation?

A. Mr. Kalins said, "Believe me, Bucky, I hate to do this, but we are letting you go."

Trial Examiner Myers: You are sometimes known as "Bucky"?

The Witness: Mr. Kalins sometimes calls me that.

Mr. Luce: Will the reporter please read the answer?

(Answer read.)

The Witness: I believe he said to me, "This is nothing personal." He said it was a job he didn't like to do, but he is letting me go. He said, "You

(Testimony of Cosby M. Newsom.)

can apply for a transfer to another department through personnel, you can resign and probably get letters of recommendation, or we will terminate you within two weeks."

I told him I couldn't understand it and what were the reasons for that action? He named off three incidents, spaced throughout my three years of service with the company, and said these were the reasons for my discharge.

I told him that I didn't believe things like that were sufficient and I also told him that in my experience with the department these three incidents didn't loom so large when you take into consideration the frequency of incidents of that nature among the members of the department and the [26] magnitude of some other mistakes that had been made.

I told him also that I would like for him to state the reasons, as he stated them to me, to the rest of the members of the department, and I asked him if it was possible to arrange a meeting with the rest of the members of the department the following day.

He said, "Well, that is a departure from form." He can't see why it would be necessary, because what possible bearing could that have on it. I mentioned that we were in the middle of a move to organize and it certainly did bear on the rest of the members of the department.

Mr. Kalins said he would see if such a meeting could be arranged. While waiting for transportation back to Silver Gate, I was at the door of Sta-

(Testimony of Cosby M. Newsom.)

tion B and waited some 15 or 20 minutes and somehow I was notified that there would be such a meeting and that it would be held right away; that I was to come on up.

We met in a vacant office at Station B and they called Fowler and Shroble up from Silver Gate, and Botwinis and Webb from Station B.

Trial Examiner Myers: Who else was there?

The Witness: Mr. Kalins was there and I believe Mr. Warden went to Station B to pick up the other two fellows there.

For some reason, I believe Shroble was late and we sat talking until we were all there. No one mentioned my discharge [27] at all. Mr. Kalins said they were making big plans for the instrument department; that they were going to start a school that would run into about four hours of overtime a week for the fellows, at which time they would be more thoroughly acquainted with their tasks as instrument technicians; that they would be paid for this time.

He also mentioned the possibility that some of the members of the department might possibly be sent back to the Bailey Meter Company to their school and that they were really going to give the department a shot in the arm, and get things humming.

Then Mr. Shroble and Mr. Warden came in and Mr. Kalins stated before the other four men the three incidents.

Trial Examiner Myers: What three incidents?

(Testimony of Cosby M. Newsom.)

The Witness: Well, sir——

Mr. O'Brien: Tell us as well as you can the words used by Mr. Kalins and not your recollection of the incidents, but just what Mr. Kalins said.

The Witness: Well, Mr. Kalins said when he took over the job that Mr. Hardway had, that Mr. Hardway advised he had had words with me a year or so ago and that Mr. Hardway said that the quantity of my work had fallen down somewhat. That was the first incident.

Mr. Kalins said that the second incident was when Warden got after me about some gauges at Silver Gate about [28] a year later, and the third incident was over my method of work as concerns the No. 2 unit at Silver Gate. The crux of it was that there was a number in grease pencil on the face of the gauges. The gauges were installed with dirty faces.

I answered the charges before Mr. Kalins and the rest of the group, and Mr. Warden said——

Q. (By Mr. O'Brien): I hate to interrupt, but did Mr. Kalins just recite these three incidents, one after another, or did he give you an opportunity to answer each one?

A. Yes, between each one.

Q. Will you tell us what answer you gave to Mr. Kalins?

Trial Examiner Myers: In the first place, when did Mr. Kalins take over the department?

The Witness: About the middle of 1950, I believe.

(Testimony of Cosby M. Newsom.)

I told Mr. Kalins, as to the first incident, the discussion between Mr. Hardway and myself, that we had more or less resolved that. It was discovered there was an omission from the daily log. I told him at the time that Mr. Hardway was satisfied. He said it didn't mean much to him, but the log had to pass Mr. Hathaway's scrutiny; that there were two days, in particular, out of several months' work that he didn't particularly think Mr. Hathaway would like. I asked him to show me in the log what two days they were and perhaps I could shed some light on it. I told Mr. Kalins that Mr. Hardway thumbed through the log and showed me the two days [29] and they were the day before and the day after I was sick. I told Mr. Kalins that at that time I had said to Mr. Hardway that perhaps I should have been off all three days. Then it occurred to me that there had been an omission from the log on one of the days that looked like a light day's work.

There had been an item, namely, the overhaul of a piece of Orsat that had been left out and such a thing could easily happen. A person keeps his own account and turns it in to the instrument engineer who writes it up into a smooth log.

I told Mr. Kalins that the first incident between Mr. Hardway and myself was resolved and Mr. Hardway was satisfied; that there were no hard feelings about it, and he said, "Don't tell this to anybody, because we are one big happy family here, the instrument group, we don't squabble among ourselves." He said, "Just forget it, Newt," and



(Testimony of Cosby M. Newsom.)

he shook my hand and left.

The second incident occurred at Silver Gate when I was in charge of the work there under Mr. Warden. I explained to Mr. Kalins that Mr. Warden had called me in and said he had heard some rumors that my work was falling down. I asked him to be more specific. I said, "If it is suffering, I, above all people, should be the first to know, and I should know exactly where I am falling down."

He told me that it was because of some gauges. Mr. [30] Prout, assistant station chief at Silver Gate, had asked me to help him calibrate some gauges.

Mr. Luce: Do I understand the witness is now telling the conversation that occurred at this meeting on February 15th?

The Witness: Yes.

Mr. Luce: When you were telling all of these things to Kalins?

The Witness: Yes, this is when I told Kalins and the group.

Mr. O'Brien: Judge Luce said something about February 15th. Was that the date?

The Witness: No, that was not the date of this meeting. It was February 1st.

I asked Mr. Warden exactly what the complaint was and he said Mr. Prout had complained and said that a week or so ago he had asked me to check the gauges on the No. 2 Unit feed water system and one of them was obviously reading erroneously.

I told Mr. Prout that Mr. Warden calls me by

(Testimony of Cosby M. Newsom.)

phone each morning and outlines my day's work. I said, "I will sandwich the jobs in." There were four gauges, and I said, "I will try to get them among my regular work."

He said, "That would be fine."

I calibrated the gauges about one a day or maybe skipped a day and maybe skipped another one and at the time I was [31] called in there was one remaining gauge. I had my notes in my pocket at that time and it was my intention to get that gauge as soon as I could.

I told Mr. Warden I thought I could see some solution to the situation and that was to clarify and tell me exactly whom I was to take my orders from. If I was to work for Mr. Warden and carry out the things he told me to do, that would be one thing, but if the Station Chiefs were to ask me to do this or that, as a personal favor, naturally, the work that Mr. Warden assigned me, as my immediate supervisor, would have to take preference.

He said, "All right, we can iron that out." And he said further, "From now on, everything comes from me. If someone asks you to do something for them, tell them you will and call me, and I will lay out a plan to get the work done." We left it at that. That was it and things worked out without conflict after that.

The third incident, as I explained to Mr. Kalins, was over the gauges on the No. 2 Unit right after the overhaul. Now, we had been working quite a bit of overtime, and I think one of the points that Mr.

(Testimony of Cosby M. Newsom.)

Kalins brought out at the time I was on the carpet was that I didn't know where the attemperator was on the No. 3 boiler. I told Mr. Kalins that I wanted to know where he got such an idea. He said Mr. Warden told him that I was told the lead the phones to the No. 3 boiler [32] attemperator and that I didn't know what it was. I told Mr. Kalins that I assumed he meant the attemperator drive and I led the phones to the attemperator drive on the No. 3 boiler.

Also, I said that the day was getting long. Mr. Warden and I had put in 18 hours and when you work so long it is very easy to make a minor mistake and he agreed and left it at that point. He said he had not been informed it was in the morning after 18 hours of work. And he said, well, "The main thing was the gauges with dirty faces that were installed on the turbine."

That occurred on a Saturday and that morning when we got our job assignments from Mr. Warden he told us, "We are going to have to shave the overtime as much as possible." He said, "We have got a lot of overtime and they have informed me that we are to shave the overtime." He assigned Shroble and I to install the gauges and the meters on the No. 2 Turbo-unit, and we had been instructed to do it with dispatch. We did that. The complaint was about a small number greased in on the face. We had numbered them clockwise in rotation and the small number in grease pencil was on the face of the gauge. The faces had been cleaned once by Mr.

(Testimony of Cosby M. Newsom.)

Fowler and Mr. Shroble and they had erased the large numbers and replaced them with small numbers in grease pencil that obscured none of the faces. [33]

I told Mr. Kalins that because the turbines were to be painted within a very short period of time there would be more cleaning and because we were told to do the job with dispatch, that we left it at that and let that finish our day's work.

Mr. Warden then said I was the first to leave the building, and I told Mr. Warden that that was not so. That Mr. Cole and Mr. Shroble left the building before I did. In other words, they had completed their work before I had completed mine and that I had put down my time exactly when I left the building.

That was my answer to Mr. Kalins.

Q. (By Mr. O'Brien): What else took place? You have described the charges made against you and the answer you made to the charges on or about February 1st. What else was said at this meeting?

A. Well, I believe it was Fowler who said he was terribly suspicious of this in view of the fact we were organizing and that this would tend to disrupt our move. All of the fellows said they would certainly get behind me in getting to the bottom of this thing. To their minds the charges were unjust. They said that.

I told Mr. Kalins that I was not sure what my recourse would be or whether there would be any recourse, but if there was a single avenue open that

(Testimony of Cosby M. Newsom.)

would tend to straighten [34] the matter out, I would look into it and take action along that line.

He told me he didn't see what I could do. He said, "If I was told by Mr. Hathaway that my work was not up to par," he said, "I would leave immediately and seek another job somewhere else."

I told him I didn't think that idea applied in this case.

\* \* \* \* \*

Q. (By Mr. O'Brien): Do you remember anything else that was said at this meeting?

A. There was one more incident that was brought up by Mr. Kalins as to the reasons for my termination and that occurred in December of 1950. The situation was that I had been requested to check over, I believe, Unit 1 from top to bottom with special emphasis on draft connections and furnace [35] connections, and to check it over prior to lighting off.

In a subsequent investigation of the panel and working around it, we discovered there was an air-flow mechanism that had been pinned down and made inoperative, and this should have been caught. At the time the thing was taken very lightly. There was no possibility that the boiler would have been lit without an indication of airflow in the first place. There was no reprimand. We had a good laugh, Fowler, Shroble and myself. It was Warden who discovered the locked mechanism and we made light of it at the time. That was the very incident that was brought up. [36]

(Testimony of Cosby M. Newsom.)

\* \* \* \* \*

Q. (By Mr. O'Brien): Do you know whether, in response to my question, it is now your recollection at this meeting on February 1st that Mr. Kalins mentioned the incident which you have just described? A. Yes.

Q. Did he mention it in approximately the words you used? A. Yes.

Q. And did you reply to him?

A. Yes, I did.

Q. In approximately what words?

A. I just stated my reply.

\* \* \* \* \*

Trial Examiner Myers: I think you better tell us again. [37]

The Witness: Mr. Kalins mentioned, as a third incident, the fact that I had been instructed to check over Unit 1, the two boilers, with emphasis on the draft line connections and all controls in general. He mentioned that I had overlooked or failed to find a locked mechanism that was rendered inoperative through someone's carelessness that I should have caught.

My reply to Mr. Kalins was that I should have caught it, but that I failed to see why this should be part of the reason for my dismissal when at the time nothing was made of the incident. Mr. Warden was the fellow that discovered it and no one would have lit the boiler off without an indication of air flow. There was no indication of a mistake that would damage any property. I admitted that I

(Testimony of Cosby M. Newsom.)

should have found it, but I couldn't see any great degree of guilt or why something wasn't mentioned at the time.

Trial Examiner Myers: When did this incident take place?

The Witness: Sometime in December, I believe.

Trial Examiner Myers: 1950?

The Witness: 1950, sir.

Q. (By Mr. O'Brien): Is that all you recall of this meeting on or about February 1st?

A. Yes.

Q. Did you continue to work for the following two weeks? A. Yes, I did. [38]

Q. During the following two weeks did you have any further conversations with any of the supervisors whom you have named?

A. From day to day different supervisors spoke to me.

Q. If you will, give the date, approximately, the time, place and who was present.

A. I believe at the first conversation when I was told I was to be terminated, when Mr. Warden, Mr. Kalins and myself were present, Mr. Kalins told me if I was off sick within the next two weeks I must bring a doctor's certificate. Then, later, when I reported to work at Silver Gate, the next day Mr. Warden assigned me to calibrating test gauges and I was told by Mr. Warden not to circulate among the men of the plant; that I was to stay right at my work.

I was also told by Mr. Warden the next day that

(Testimony of Cosby M. Newsom.)

the company didn't have to give me two weeks; that they could let me go immediately and they would do so if it looked like I was going to circulate among the men and tell them about all of this.

Trial Examiner Myers: Were you ever required to bring a doctor's certificate on one day's illness?

The Witness: No, sir.

Q. (By Mr. O'Brien): During the two weeks, did you have any further conversations with Mr. Kalins? A. Yes, I did.

Q. Approximately when? [39]

A. It was within a day or so of my termination. He came to me and told me he couldn't see why I didn't resign because that would make things much easier; that there was some strong possibility I might be able to collect my vacation pay if I did resign, and he couldn't see why I didn't do that.

He also told me I was a good man and that within a few years I probably would be driving up out front in a Cadillac because of my ability, and so forth.

I outlined to him what I had learned of the recourse I had through the National Labor Relations Board and that I was pushing the case; that I was petitioning the National Labor Relations Board for a hearing on the matter and he said he couldn't understand why I felt like that, why there was so much at stake. I explained to him I felt quite strongly about our move to organize and that I was willing to make any sacrifice.



(Testimony of Cosby M. Newsom.)

Q. Did you have any conversation with Mr. Hathaway during the two-week period?

A. No, I didn't see Mr. Hathaway.

Q. Did you have a conversation with either of the station chiefs during the two-week period?

A. Yes.

Q. With whom?

A. Mr. Campbell, the station chief at Station B.

Q. Where were you working at the time? [40]

A. I was working at Silver Gate.

Q. And who was present?

A. Mr. Campbell and myself.

Q. Can you tell me approximately when it was within the two-week period?

A. I believe it was in the first week, it was soon after I had been given my termination.

Q. What was the conversation?

A. Mr. Campbell seemed quite concerned. He had recommended me quite highly a year or so prior and he seemed quite concerned that I was broken hearted over this. He wanted me to face the world with a stiff upper lip and get started in some other field. He said I was strong and versatile, able, and no doubt make my mark in whatever field I chose. He said I should get started on it right away.

He also told me that at one time he had been in a situation quite similar to my own. He said that he was employed as a young man, married and with one child, and a similar circumstance arose. He thought he was doing very well in a power plant somewhere in the west and he went along for sev-

(Testimony of Cosby M. Newsom.)

eral years and worked himself up, when all of a sudden one day he was called in by an unjust employer and told that he was going to let him go.

Mr. Campbell told me he let the fellow have it. I told him that I wouldn't think of doing anything that childish in [41] this situation; that I bore no malice toward anyone, in particular, and I had the feeling this was not the work of any single individual opposed to me in the organization; that I wouldn't do a thing like that.

He went on to say that even after he left the station chief have it, three years later it was necessary for him to account for the time he had put in at this power plant and he wrote the station chief for a letter of recommendation and he got the letter. The letter said simply that Mr. Campbell had left their employ during the time of labor curtailment. In other words, there was no blot on his record.

He said he also failed to see what I stood to gain by pushing this through the court. He said, "Let's suppose these charges against you are false." I said, "I know the charges are quite real, they have a foundation in fact."

He said, "Well, let's suppose," and I went along, and he said, "Supposing that these charges are entirely false against you, these people who have charged you and done you wrong will suffer for it in the hereafter."

The conversation lasted about four hours, we talked of many general things, and closed it on that.

(Testimony of Cosby M. Newsom.)

Q. During approximately what period did you work under Mr. Hardway's supervision?

A. I believe Mr. Hardway became efficiency engineer about five or six months after I entered the instrument department. I would say two years I was under Mr. Hardway. [42]

Q. Mr. Hardway went into the service approximately when?

A. I imagine around August of last year.

Q. Was he succeeded immediately by Mr. Kalins? A. Yes.

Q. Of the five instrument technicians who have signed General Counsel's Exhibit No. 2, which ones served under Mr. Hardway for about how long?

A. Mr. Webb.

Q. For about how long?

A. I would say a year, possibly.

Trial Examiner Myers: You mean approximately a year? The Witness: Yes.

And Shroble, a matter of weeks.

Q. (By Mr. O'Brien): Yourself, of course?

A. Yes.

Q. Did Mr. Fowler ever serve under Mr. Hardway? A. No, sir.

Q. Mr. Botwinis? A. No, sir.

Q. Mr. Shroble?

A. Shroble, a few weeks.

Q. After Mr. Hardway went into the Navy, did he visit the plant? A. Yes, he came back.

Q. Approximately when?

A. I believe it was around Christmas of 1950.

(Testimony of Cosby M. Newsom.)

Q. Did you have a conversation with him?

A. Yes, I did.

Q. Where was that?

A. I was working on the No. 2 Unit at Silver Gate and Mr. Hardway came in with some relative. He introduced me to the relative at that time and we had conversation.

Q. What was your conversation with Mr. Hardway?

A. Well, he mentioned that they had cut his liquor rations down up at Mare Island, and just general conversation. He also asked me how I was doing and I told him that we were really rushed. We just spoke lightly for a while and he said, "It looks like this war may involve us too, and if you and the rest of us all return," he told me, "remember this, Newt, there is a place for you in the instrument department." He said, "I don't care whether you go back in the Merchant Marine, the Navy, or what, but there is a place for you in the instrument department."

\* \* \* \* \*

#### Cross Examination

Q. (By Mr. Luce): When you left the employ of the company, did you obtain other employment?

A. Yes.

Q. Where?

A. I worked for the California Glass Company.

Q. And how soon after leaving the San Diego Gas & Electric Company did you obtain that employment?      A. About two months.

(Testimony of Cosby M. Newsom.)

Q. After about two months? A. Yes.

Q. Are you still employed by them? [45]

\* \* \* \* \*

Q. (By Mr. Luce): Mr. Newsom, from time to time during your employment with the company as an instrument technician, you were told that your work was not satisfactory, were you not?

\* \* \* \* \*

The Witness: Three times in three years.

Q. (By Mr. Luce): When was the first time?

A. Soon after Mr. Hardway took over as the efficiency engineer.

Q. That was about what date, if you remember?

A. I would say possibly June of 1949.

Q. And was it Mr. Hardway that told you your work was not satisfactory? A. Yes.

Q. What did he say?

A. He said that he had no complaint as to the quality of my work, but the quantity was falling down.

Q. Did you say quality or quantity?

A. The quality of my work was fine, but the quantity seemed to be falling down. [47]

Q. What else did he say?

A. I said, "The record of the work performed is kept in the log." He had a copy in his hand and I said I would appreciate it if he would show me in the record where the quantity of my work had suffered because I felt, as a man, I had been doing a day's work each day.

He had his thumb in the book and he said, "Well,

(Testimony of Cosby M. Newsom.)

Newt, I want you to understand it is not me, but this smooth log must pass through Mr. Hathaway's scrutiny and something like this might stir him up."

He pointed to two days' work in particular, which were in the smooth log and he said, "These are the two days I am most concerned with." As I stated previously, one of the days was a day prior to a day when I was off sick and the other was a day after a day I was off sick.

Q. As a matter of fact, you were only off sick in that instance just one day?

A. Yes, the two days in complaint were on either side of that day.

Q. Did he say to you that you should improve your work and bring it up to a higher standard?

A. He asked me to look at the two days, in particular, and I read them. I said, "It seems to me like they are a couple of pretty soft days," and my first reaction was that I must have been quite sick and should have been off all three days. I told him that and suddenly it occurred to me there had been an omission from the log. I explained that to him, and he said, "Well, that takes care of that day."

Then we went to the next day, the other day, and he said, "What about this?" I explained that I had to fabricate for the job. In other words, I believe I installed a gas bowl and capillary tube and I had to fabricate a well. In other words, make the mechanism and that took time. I explained that

(Testimony of Cosby M. Newsom.)

to him and he said, "Well, perhaps you put more time in that project than it was really worth." I agreed with him that perhaps I did.

Q. Were they the only things he mentioned?

A. These were the only things he mentioned.

Q. When was your work next criticized by some supervisor?

A. It was shortly after I had taken over the work at Silver Gate and was broken in to there by Mr. Warden, when he moved up instrument engineer.

Q. About what was the date?

A. I would say eight or nine months later.

Q. What did Mr. Warden say to you?

A. As I said, he said that he had heard some complaints as to my work, that it seems that it had fallen down. He said he has heard a vague rumor and I said, "If we could get more concrete information I may be able to do something about it." He finally said, "It is about those gauges on the No. 2 feed water system that Mr. Prout asked you to calibrate." And I immediately said, "Oh, those," and went on to explain why it was I hadn't completed the job.

It was, as I told Mr. Warden, due to the fact he was giving me work assignments each day. I had a notebook full of work. The work was outlined a week ahead or so; and this other command came from Mr. Prout. I was doing my best to sandwich the work requested by Mr. Prout in with the work given to me by Mr. Warden.

(Testimony of Cosby M. Newsom.)

I further explained to Mr. Warden that a situation like that might not arise if it was cut and dried as to who gives me the work assignments. He agreed and he said, "In the future when you are asked by someone to do something, get in touch with me—use the phone—I am down at Station B, and if you call me up I can fit it into the program and see that there is time allowed for it and we will avoid situations like that." We left that conversation right there.

Q. When was the third time your work was criticized and by whom?

A. Well, it was when Mr. Kalins came down. It was after he had assumed the duties of efficiency engineer, and Mr. Warden called me in the office.

Q. What time was that about?

A. I believe it was in the early afternoon.

Q. Of what day?

A. I don't recall exactly. [50]

Q. Can you give us the month or the year?

A. It was within a few months after Mr. Kalins took over as efficiency engineer.

Q. When did he take over as efficiency engineer?

A. I don't know exactly.

Trial Examiner Myers: Approximately?

The Witness: About June or July, I imagine, in 1950.

Q. (By Mr. Luce): State what Mr. Kalins said.

A. He said that he had some complaints about my work. He said that we were producing fine, doing plenty of work, but that I was falling down



(Testimony of Cosby M. Newsom.)

on little things. He mentioned a few, such as, installing the gauges on the No. 2 turbo-generator and leaving the faces dirty. I told him that the faces were not obscured; that I used to be an operator myself and it was natural for me to clean things up like that, but that I couldn't see it at \$6.00 an hour how we would be justified in staying on on Saturday. And Mr. Shroble and I were both assigned to the job in doing the work.

He mentioned some things as to my attitude, it wasn't what he expected when he came up there to tell me these things, and Mr. Kalins told me that Roy said to Mr. Kalins that I didn't know where the No. 3 attemperator was. I asked him where would he get an idea like that and Mr. Kalins said, "That is what Roy said."

I told Mr. Kalins that that incident, to my recollection, occurred when I was told to leave the 'phones down there, and working with Mr. Warden after about 18 hours of continuous work. Immediately, Mr. Kalins said, "Oh, that happened after 18 hours of work?" I said, "Just about." He said to leave it at the attemperator to the south and I thought he meant the attemperator at Drive A.

Mr. Warden said that I thought so little of the job that I was the first man out on Saturday. I told him that was not so, that Mr. Cole and Mr. Shroble both left the plant before I did and I put down my time exactly when I left. Mr. Warden didn't say anything to that. Mr. Kalins said, "Well, what are we going to do?" He said, "How are we

(Testimony of Cosby M. Newsom.)

going to resolve this?" Mr. Warden said, "Well, let's watch things pretty close for the next 30 days and see how things are." As a matter of fact, I marked the calendar and watched it closely for the 30 days and at the end of the 30, 40 or 50 days there was no reason for me to believe that I wasn't doing fine.

Q. Of course, I only asked about the criticisms made of your work.

Mr. Luce: May I ask another question before we adjourn?

Trial Examiner Myers: Yes, certainly.

Q. (By Mr. Luce): Did you ever work 18 hours in any day for the company?      A. Yes.

Q. Do you remember what day it was? [52]

A. Well, it was very close to 18 hours, at least 16.

Q. Was it 16 or 18?

A. Quite a length of time, at any rate.

Q. Was it the 16 or more?

A. I do not recall.

Q. And you don't know whether it was 18 or not?      A. It could have been.

Q. Isn't your statement incorrect that you at any time worked 18 hours in any one 24 hour period for the San Diego Gas & Electric Company?

A. I would say that I have worked 18 hours from the time I started until the time I quit, meal time and things like that considered as straight time.

(Testimony of Cosby M. Newsom.)

Q. You mean when you went out for your meals?

Trial Examiner Myers: You mean including the time you took for meals?

The Witness: Yes, an 18 hour stretch without sleep.

Q. (By Mr. Luce): How many times did you work 18 hours including the time you took off for meals? A. I don't know, at least once.

Q. At least once? You don't remember of any other instance?

A. I remember working other long stretches of time.

Q. You haven't any records of your own?

A. No, sir. [53]

\* \* \* \* \*

Q. (By Mr. Luce): Mr. Newsom, was your work ever criticized by Mr. Zitlaw, the station chief at Silver Gate? A. No, sir.

Q. Was your work ever criticized by Mr. Campbell, the station chief at Station B?

A. Not to me.

Q. Was it ever criticized by Mr. Stovall?

A. No, sir.

\* \* \* \* \*

Q. (By Mr. Luce): Now, Mr. Newsom, when you talked with Mr. Warden on January 15, or January 16, one of these times, did he not say that he would assist you in making your application to the union for admission to the union?

A. Not in so many words.

Q. Well, now, what did he say in reference to assisting you?

(Testimony of Cosby M. Newsom.)

A. He said that he would help us compile the information as to our duties as instrument technicians so that we might compare them with the duties of the instrument repairmen throughout southern California in an effort to clear up the differential in pay.

Q. Also, in order to give you the proper classifications for your positions in the union, did he not?

A. I don't believe he mentioned the union.

Q. Wasn't that the purpose of getting the job classifications of the instrument technicians, so that you could use it in your application to the union to be your bargaining agent?

A. We didn't include anything of that nature in our application to the union.

Q. Didn't Mr. Warden say you should include it and that he would give you the information to include it?

A. No, sir, I don't believe he did.

Q. He did furnish you with that information as to the proper classifications and duties of your jobs?

A. Some time later he procured from personnel our job classification sheet and the list of duties required of the instrument men by the San Diego Gas & Electric Company. [55]

\* \* \* \* \*

Q. I now hand you a document headed "Copy" and at the top in pencil is a notation, "Given to the Instrument Technicians." I will ask you if that

(Testimony of Cosby M. Newsom.)

is the sheet that Mr. Warden gave you during the week following January 15, 1951?

A. That looks like it, yes.

Mr. Luce: We offer this document.

Trial Examiner Myers: Is there any objection, Mr. O'Brien?

Mr. O'Brien: No objection.

Trial Examiner Myers: There being no objection to the introduction of this document in evidence, I will ask the reporter to kindly mark it Respondent's Exhibit No. 1.

(Thereupon the document above-referred to was marked Respondent's Exhibit No. 1 and was received in evidence.)

## RESPONDENT'S EXHIBIT No. 1

(Copy)

Job Title: Instrument Technician; Grade: B;  
Classification: 10. Code No. W-521-A. Supersedes W-521.

Job Summary: Under direct supervision: Operates, adjusts, maintains and repairs test instruments and control equipment utilized to assure optimum plant efficiency; conducts varied electronic, chemical and mechanical tests; assembles routine and special operating data; performs other related duties as required or directed.

Work performed: Under direct supervision: Reviews operating logs and trouble reports for entries concerning instruments and control equipment;

(Testimony of Cosby M. Newsom.)

takes necessary corrective action on mis-operations; reviews recording charts and strip records for required adjustments or repairs.

Consults with the Instrument Engineer to compile the daily work schedule in accordance with the routine job control book and special work indicated by operating logs or as requested by the Station Chief or Efficiency Engineer; completes operational checks and daily maintenance on electronic and mechanical combustion control systems, temperature indicators and recorders, pressure gauges, etc.; assists in planning, scheduling and performing the annual overhaul of controls and instruments.

Periodically collects data on boilers to indicate cleanliness; checks vibration on large turning equipment; assists with other mechanical, chemical and electronic tests. Maintains records of routine tests; performs other related duties as required or directed.

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Q. (By Mr. Luce): In regard to this transfer of your work to the general overhaul and back to some other work, when were your duties changed so that you were put to work on that general instrument over haul?

A. Well, whenever the over haul period started. It was the rule to sacrifice, to pull a man off of the routine and put them on the over haul. [56]

Q. Well, let me refresh your memory. Along in September of 1950 the big generator went out at the Silver Gate Power Station, did it not?

(Testimony of Cosby M. Newsom.)

A. I believe that is correct.

Q. There was a great deal of activity and a lot of work done by various persons in the employ of the company in regard to restoring that generator, is that correct? A. Yes.

Q. I think you ought to speak out because the reporter can't see you nod your head.

A. Yes, that is right.

Q. Then that same time the instrument men were put to work making a general over haul of the instruments while the generator was out, is that correct? A. That is correct.

Q. During that period everybody was very busy because of the generator having gone out?

A. Yes.

Q. Now, how long were you engaged in the over haul of the instruments at that time, beginning in about September, 1950?

A. I couldn't say exactly, each day's work was assigned.

Q. Let me ask you who assigned it.

A. Mr. Warden. [57]

Q. For each day? A. For each day.

Q. Go ahead.

A. There was a long range work sheet that he had which gave us the general idea. The work assigning was done exclusively by Mr. Warden, he didn't have any one else to help him.

Q. Let me put it this way. How long did that continue, the over haul of the instruments by you and whoever worked with you?

(Testimony of Cosby M. Newsom.)

A. I don't know.

Trial Examiner Myers: Approximately?

The Witness: Well, it seems several months. We were doing other work in conjunction with it. We had work at Station B, and so forth, that wasn't strictly all we did. [58]

\* \* \* \* \*

Q. Who worked with you on the general overhaul program?

A. Primarily, Mr. Fowler, Mr. Shroble, and Mr. Warden.

Q. That is, the three of you, Mr. Shroble, Mr. Fowler and yourself worked under Mr. Warden on that program? A. Yes.

Q. When that was completed was when Mr. Warden transferred you back into some other duties, was it not?

A. That was no longer in process. The job was completed and we were to resume normal operations.

Q. And do you remember about when that was? You say it was a few months. Can you give us a more accurate period of time?

A. It was around the first of the year, 1951, that he spoke of resuming the routine. [59]

\* \* \* \* \*

Q. Let me ask you right there—the work, generally, that you and other instrument technicians had to do was inspecting and regulating various instruments throughout the production plant?

A. Yes.



(Testimony of Cosby M. Newsom.)

Q. And that responsibility was upon you to have those instruments in good working order so that they would accurately disclose what they were supposed to disclose? A. Yes. [60]

Q. And if the instrument technicians failed in their work in any respect, it might cause a good deal of harm or damage to the plant?

A. Yes.

Q. And it was highly important that the technician men be not only highly trained, but be cooperative and on the job as well as accurate in their work? A. Yes.

Q. You recognize that as one of the requirements of your job? A. I do, sir.

Q. As a matter of fact, a mistake of the instrument men might put a whole plant out of operation and cause not only damage to the company, but interfere with the production of electricity for the whole city? A. It certainly could.

Q. Now, when you had the conversation with Mr. Hathaway on January 1st, that is when the three of you went up there, maybe it was four or five of you, Webb, Newsom, Fowler, Shroble and Botwinis, with Kalins, and, I believe, Warden?

A. That is correct.

Q. At that time Mr. Hathaway explained to you the advantages and disadvantages of joining the union, did he not?

A. He didn't explain any advantages.

Q. Well, he told you that there might be advantages in it to you, did he not? A. No, sir.

(Testimony of Cosby M. Newsom.)

Q. All he did was to explain the disadvantages?

A. Yes.

Q. He said to you at that time that if you joined the union you would have to abide by the union rules and contract which might require you to work certain hours in a different way than you did at the present time?

A. He said if we joined the union the contract would be lived up to hard and fast.

Q. That is, the union contract?

A. The union contract.

Q. And there might be disadvantages to you in having to comply with that contract over your present occupation, is that not correct?

A. He assured us there would be.

Q. He also suggested that you might not be eligible to join the union because of the particular field of the instrument technicians which, he said, was confidential work?      A. Yes.

Q. Did he tell you that the question of whether or not you would be eligible would come up in the negotiations brought to the company by the union?

A. No, sir.

Q. When you left Mr. Hathaway's office he said nothing in the way of a threat of discharge or reprisal or anything of that kind, or of anything that you would lose your job if you joined the union, or anything of that nature, is that not correct?

A. Well, he didn't make any threats.

Q. And when you left after listening to him

(Testimony of Cosby M. Newsom.)

you said you and the other men would meet later and decide what to do? A. Yes.

Q. Now, Mr. Newsom, no one of you five had been selected as spokesman up to that time, had you?

A. We didn't have a vote or nominate. It was assumed that I was the spokesman.

Q. Fowler talked as much as you did at all these meetings?

A. Mr. Hathaway said, "Who is your spokesman?" I spoke—I didn't jump to speak, but I looked around me and no one said a word for, I would imagine, a full ten seconds and I just began speaking. I was, you might say, there unofficial leader and spokesman.

Trial Examiner Myers: You appointed yourself as spokesman?

The Witness: No, sir, I didn't.

Trial Examiner Myers: You carried the ball for the employees? The Witness: Yes.

Q. (By Mr. Luce): Didn't Mr. Fowler do some talking, also? A. We all did some talking.

Q. Didn't Mr. Fowler do about as much as you did, at the various meetings? [63]

A. Mr. Fowler knew quite a bit about it. We had discussed every phase of it. All of us, we all carried the ball. We are still carrying the ball.

Q. Didn't Fowler do as much talking and carry the ball in these matters as much as you did?

A. It is hard for me to say.

Q. There wasn't much difference between the

(Testimony of Cosby M. Newsom.)

activity of the two of you at these meetings, was there?

A. We were in agreement at these meetings.

Q. I mean in your activity and what you said at these meetings?

A. I assumed that I was the leader. It is hard for me to say.

Q. Now, you had conversation with Mr. Warden the next morning on the 16th, about 7:30 a.m.?

A. Yes.

Q. Now, will you tell me just what Mr. Warden said to you at that time?

A. Well, he said that our position didn't look very strong; that he had been talking with Mr. Hathaway and other people and it certainly looked bad for us. He said, further, that if he was in our shoes he would be looking around for other employment.

Q. That was all that he said at that time in regard to your activities?

A. No, sir, he asked us if we thought we could compete in the market as instrument engineers. He said he thought there was no scarcity of instrument engineers, technicians and the like, and that their field of experience in the business was much wider than ours.

Q. It was after that conversation at that meeting that Mr. Warden furnished you with the description of the job classifications which has been introduced into evidence as Respondent's Exhibit 1?

(Testimony of Cosby M. Newsom.)

A. It was after that, yes. We requested it of him later and we also drew up our own list of things that we are required to do among ourselves.

Q. Didn't Mr. Warden say at that conversation that if you were going to make the application you better get your facts straight and have it in good shape, and that he would furnish you with the proper descriptions of your job classifications?

A. His attitude at that meeting was that he wanted nothing to do with the union organization.

Mr. Luce: I ask that that be stricken out as his conclusion.

Trial Examiner Myers: Strike it out.

Q. (By Mr. Luce): What did he say?

A. I don't remember discussing it at that time, this job control sheet.

Trial Examiner Myers: Job descriptions?

The Witness: Job descriptions. [65]

Trial Examiner Myers: What do you mean, you don't remember?

The Witness: We did not discuss it at that time; that it was not discussed.

Trial Examiner Myers: I think this would be a good time to adjourn for lunch unless there are some objections.

Mr. O'Brien: No objection.

Mr. Luce: No objection.

Trial Examiner Myers: Very well, we will stand adjourned until 2:00 o'clock. The witness is excused until 2:00 o'clock this afternoon.

(Whereupon, a recess was taken until 2:00 o'clock p.m.) [66]

After Recess

(Whereupon, the hearing was resumed, pursuant to the taking of the recess, at 2:00 o'clock p.m.)

Trial Examiner Myers: Gentlemen, are you ready to proceed?

Mr. OBrien: General Counsel is ready.

Mr. Luce: We are ready.

Trial Examiner Myers: Mr. Newsom, will you resume the stand?

COSBY M. NEWSOM

a witness called by and on behalf of the General Counsel, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Luce): At that meeting in September, I believe it was when the discussion of the dirty gauges occurred, do you recall that?

A. Yes, I do.

Q. Now, at that time, isn't it a fact that you were told at that meeting that if your work did not improve and if it was again found unsatisfactory that you would not be allowed to continue in the instrument technician division?

A. No, sir, I was not told that.

Q. Now, at this meeting of February 1st with Mr. Kalins you stated at that conversation that

(Testimony of Cosby M. Newsom.)

there were three reasons, or gave three reasons, why you were discharged or terminated. [67]

Did he say there were three incidents?

A. He said there were three incidents?

Q. Didn't he tell you of more than three incidents?

A. Well, he used several adjectives and he told me that these were incidents that pointed out that I was incompetent and haphazard, and various other things. He said these incidents pointed that out to him and he was letting me go on account of that.

Q. When you testified this morning you stated in this conversation he gave you three reasons and you recited the reasons. Then you said there was another reason which you proceeded to tell us about. Does that make four reasons, or is that one of the three reasons?

A. There were three given more emphasis than the others.

Q. Then there were three given and then there was another one, is that right?

A. I don't believe Mr. Kalins mentioned it. I am not sure, maybe I divided one of the reasons. There were three reasons given, three incidents cited as to why he was letting me go.

Q. Weren't there more reasons?

A. Three major incidents.

Q. Weren't there minor incidents given?

A. I imagine a few, I don't recall anything but the three main incidents.

Q. Why did you say those were the major

(Testimony of Cosby M. Newsom.)

reasons? Did Mr. Kalins call them the major reasons? [68]

A. He laid a lot of emphasis on them.

Q. Did Mr. Kalins have in his hand some notes that he was using, either reading from or used to refresh his memory at the time he was telling you the reasons for your discharge?

A. He had some papers.

Q. Didn't he give you five general reasons why you were being discharged?

A. He could have.

Q. At that time you say that Mr. Warden was present, too, was he not?           A. Yes, he was.

Q. One or the other, or both of them, told you that you were free to apply for a transfer to another department?

A. Yes, I believe Mr. Kalins said that.

Q. And didn't you get angry and say you didn't want any transfer?

A. I said that according to what he had just said. My thoughts at the time were this: If, as he said, I wasn't any good in the instrument department, I wouldn't be any good in any other department.

Q. I am not interested in what your thoughts were, but what was said.

A. I said that a transfer to another department would defeat our efforts to organize as completely as my resignation. That is what I was interested in, primarily, organizing the department. [69]



(Testimony of Cosby M. Newsom.)

Q. You weren't particularly interested in retaining your job?

A. In retaining employment, yes.

Q. You weren't interested in your job?

A. I was interested in the job, I liked the job.

Q. Were you interested in retaining your job as a technician? A. I certainly was; I am.

Q. What you mean to say is that your primary interest was in organizing the department?

A. Well, I had to choose between a transfer to another department, termination or resignation.

Q. And you chose termination? Is that right?

A. I made no choice at all. They terminated me. I refused to choose.

Q. And you refused to make a transfer to another department? A. Yes.

Q. Now, at this meeting you requested Mr. Kalins to call the other members of the department together and discuss again this question of discharge, did you not? A. Yes.

Q. And he did call them? A. Yes.

Q. And at that meeting he went over again the reasons for discharge? [70] A. Yes.

Q. And was it at that meeting when he told you that he didn't see what you had to gain by making your application for proceeding with some redress before somebody?

A. At that meeting he said he didn't know what I could do to seek redress. Later, in an interview between Mr. Kalins and myself, he said he didn't see what I had to gain.

(Testimony of Cosby M. Newsom.)

Q. Did you not say at that time, in the presence of Kalins and Warden, that you were going to pursue the matter if only for the nuisance value?

A. Possibly, I said something like that. To my mind, I was going to pursue the thing to the limit because I hate to see anything half done. In my mind it is necessary to conclude each phase of living and I told him, I made no bones about the fact, that I was going to do everything in my power to bring about a redress.

Q. Did you not use that expression, "If only for its nuisance value"?

A. I possibly did.

Q. By the way, you stated in your direct examination that you were, at least at one time, a member of this union, the I.B.E.W. And were you a member at the time you were an instrument technician?

Mr. O'Brien: I will have to object. It is immaterial as far as the issues of this case go. [71]

Trial Examiner Myers: Overruled.

The Witness: I was in the union up to the time I entered the instrument department.

Q. (By Mr. Luce): Then, up until the time you entered the instrument department, you were a union member? A. Yes.

Q. Then, you didn't keep up your membership after that? A. That is right.

Q. And you are not a member now?

A. No, sir.

(Testimony of Cosby M. Newsom.)

Q. You dropped your membership about the time you became an instrument technician?

A. That is right.

Q. There was nobody required that you drop that or suggest that you drop it?

A. I was told that it was a useless undertaking. I was told that instrument men are not covered by the union contract.

Some time later Mr. Hathaway called me and said that Mr. Jewett had called about me and said I was behind in my dues. I told Mr. Hathaway that that was so and since entering the new department I was no longer represented by the union; that I had ceased to pay dues since that date. He said, "That is all right, Newt, I have to see Mr. Jewett this afternoon and I will straighten it out." [72]

Trial Examiner Myers: Who is Mr. Jewett?

The Witness: At that time, he was business agent of the I.B.E.W.

Q. (By Mr. Luce): Mr. Newsom, there was one time when you were absent from your job for approximately three days without giving any explanation therefor, was there not?

A. When you return to work after an absence, it is the common practice to state why you were absent. I probably stated why.

Q. You probably did, but did you?

A. It would be an oversight if I didn't.

Q. Wasn't that suggested to you at one time as one of the breaks in the rules of employment

(Testimony of Cosby M. Newsom.)

and one of the reasons why your work was criticized?

A. No, nothing in that nature was ever mentioned to me.

Q. Nobody ever mentioned to you the fact that you were absent without explanation?

A. No, sir.

Trial Examiner Myers: Were you absent for three days?

The Witness: Maybe, I think I averaged about twelve days sick leave in a year.

Trial Examiner Myers: When?

The Witness: It could have been any time during the three years. I don't remember any particular three day period.

Q. (By Mr. Luce): Whatever your vacation rights were, it would be expected of you to notify the company if you were going to be absent for three days? [73]

A. There was one incident where I called in and told the man on the watch, I used the unlisted phone number, that I was ill and wouldn't be there that morning. I had strep throat and a doctor treated me. Somehow or other the news evidently was relayed to Mr. Warden. I remember that one incident.

Q. You were absent for three days?

A. I am not sure.

Trial Examiner Myers: Do you remember when that incident was?

The Witness: Near the end of September 1950.

(Testimony of Cosby M. Newsom.)

Q. (By Mr. Luce): There was also an occasion on which you signed somebody else's name to one of the logs or inspection sheets?

A. Nothing was ever mentioned to me.

Q. Was it mentioned to you? A. No.

Q. You tried to erase the name and Mr. Warden was there and protested about your action?

A. I recollect such an incident. It seems that on my rough notes, I believe that was in connection with Shroble. He and I were taking alarm settings. I wrote down Webb's name, just to be frivolous. That was not to go to the smooth sheet, and Webb knew nothing about taking the alarm settings. I forgot the situation, but it was so humorous no one ever mentioned it to me up to this time.

Trial Examiner Myers: When was that?

The Witness: Toward the end of 1950, December or so.

Q. (By Mr. Luce): Have you described to us your conversation with Mr. Kalins and Mr. Warden at the time they notified you that you were about to be discharged? A. Yes.

Q. Did you not have an angry altercation with Warden, and did you not use abusive language?

A. No, sir, I did not. That is not my nature.

Q. You didn't get angry or raise your voice?

A. No, sir.

Q. Or become insulting?

A. No, sir, at no time.

Q. When you met a little later with Warden and Kalins, and the other technicians were present,

(Testimony of Cosby M. Newsom.)

did you not at that time criticize Warden severely and use angry and loud language?

A. No, sir.

Q. You didn't get angry and use angry words towards him? A. No, sir.

Q. Your answer is no? A. No.

Q. Your answer is no?

A. That is right, no.

Q. Do you mean to say that you and Campbell sat for four hours in this conversation you related where you told about an incident when he was discharged once?

A. Maybe three and one-half hours. I know I had been working a while and we talked until noon.

Q. Three and one-half hours without interruption? A. Right.

Q. Where did that take place?

A. It took place in an unused office at Silver Gate.

Q. Just you and Mr. Campbell were present?

A. Yes.

Q. Was the door closed? A. Yes.

Q. And you two sat in that room for at least three and one-half hours?

A. Approximately.

Q. You must have talked about a lot of other things? A. Yes, we did.

Q. I don't want you to tell what you talked about, but what was the nature of the conversation, other than you related here?

A. I went over the three incidents with him

(Testimony of Cosby M. Newsom.)

that had been cited by Mr. Kalins and he seemed sympathetic towards me. We discussed the fundamental philosophies—it was high level conversation. It is a little difficult to recall just what was said, other than I have stated.

Q. Well, you will say there was a lot more in the conversation than what you have related here?

A. I have recited everything in the conversation that had any bearing with the case.

Q. That is, what you think has any bearing?

A. That is the best I can do, think. [77]

\* \* \* \* \*

### ROY SHROBLE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

#### Direct Examination

\* \* \* \* \*

Q. (By Mr. O'Brien): Where do you work, Mr. Shroble?

A. San Deigo Gas & Electric Company. [78]

Q. What is your job?

A. Instrument technician, grade B.

Q. Who is your immediate supervisor, please?

A. Mr. Warden.

Q. When did you become an instrument technician B?      A. I believe, July 24, 1950.

Q. Was that under Mr. Warden?      A. Yes.

(Testimony of Roy Shroble.)

Q. And who was over Mr. Warden on July 24, 1950?           A. Mr. Hardway.

\* \* \* \* \*

Q. How long did you work for the company, altogether?           A. Since April 12, 1950.

Q. I show you General Counsel's Exhibit No. 2; do you remember signing that document?

A. Yes, I do.

Q. On the date which it bears there, January 15, 1951?

A. Yes, I believe that is the date.

Q. Do you recall any conversation with Mr. Warden on the same date that you signed that statement?           A. Yes.

\* \* \* \* \*

Q. Calling your attention to the morning of July 15, where did this conversation take place?

A. July 15th?

Q. I beg your pardon, January 15th.

A. In the instrument engineer's office at Silver Gate.

Q. Who was present?

A. Mr. Newsom, Fowler, myself and Mr. Warden.

Q. What was the conversation about?

A. Well, we notified Mr. Warden that we were going to make the IEBW, Local 465, our bargaining agent because we wanted to join the union.

He was very nice about it at the time. He said he would help us all he could, and well, it was on that general order. He said he would help us as



(Testimony of Roy Shroble.)

much as he could and I believe we asked him for a list of our duties at that time, if I remember correctly, and he said he would help us in every way he possibly could.

Q. Later that afternoon did Mr. Warden approach you again? A. Yes, he did.

Q. Where were you at the time?

A. At Silver Gate.

Q. What did he say?

A. He said he had arranged a meeting with Mr. Hathaway at Station B and would I come down with the rest of the fellows.

Q. Did you then go to Station B?

A. Yes, I believe so. [80]

Q. Where did you go?

A. To Mr. Hathaway's office.

Q. Who was present?

A. Mr. Newsom, Mr. Webb, Tony Botwinis, Thomas Fowler, Mr. Warden, Mr. Kalins and Mr. Hathaway.

Q. What was the conversation?

A. Well, it was whether we wanted to join the union.

Q. Who said that?

A. Mr. Hathaway. What he thought we would gain by joining the union and why hadn't we, if we wanted a different arrangement than we already had, hadn't we gone through the proper channels for doing it, such as, telling Mr. Warden and then he would go to Mr. Kalins and then up through Mr. Hathaway.

(Testimony of Roy Shroble.)

Q. Did you have anything to say at that meeting?  
A. No, sir, I said very little.

Q. Who else spoke besides Mr. Hathaway?

A. Mr. Newsom did most of the talking for us fellows. Mr. Kalins had a little bit to say and I believe Mr. Warden did too.

Q. What did Mr. Newsom have to say?

A. I believe he stated that it had been tried before, to get a little raise in wages. I believe it was along that line, and it never had helped in any way and we wanted to join the union. I have always been a union man and so have the rest of us, as far as I know. [81]

Newsom did all the talking at the time; I don't remember what all the conversation was about.

\* \* \* \* \*

Q. Have you told us everything that you remember about the conversation in Mr. Hathaway's office?

A. Well, there was one statement that was made that it wasn't thought that we would gain anything by joining the union; that we had more privileges now than we would have if we did join the union.

Q. Who made that statement?

\* \* \* \* \*

The Witness: It was Mr. Hathaway.

Q. (By Mr. O'Brien): The following morning did you have another conversation with Mr. Warden?  
A. Yes, we did.

Q. About what time was that?

(Testimony of Roy Shroble.)

A. I believe it was just before we started to work, a quarter to eight or 8:00 o'clock.

Q. Who was present?

A. Newsom, Tom Fowler and myself.

Q. What was the conversation on that occasion?

A. Well, I don't know too much, but one statement was made, he said he hoped our family affairs were in order so we could look for another job.

Q. Who said that? A. Mr. Warden.

\* \* \* \* \*

Q. Did Mr. Shroble do any talking?

A. Not that I remember.

Q. Shortly thereafter did you have a private conversation with Mr. Warden?

A. Yes, I did.

Q. Where was that?

A. In the instrument shop.

Q. At which station? A. Silver Gate.

Q. About how long after the 16th?

A. Maybe a week or ten days. [83]

Q. Who was present?

A. Just him and myself.

Q. What was the conversation?

A. Well, Mr. Warden asked me if I considered myself an instrument man and I said that the company classified me as such and I figured I ought to get what other instrument men were getting in the rest of the industry. That was my reason.

Q. Do you remember whether the union was mentioned in that conversation?

A. No, sir, I don't.

(Testimony of Roy Shroble.)

Q. Do you recall a meeting in Mr. Hathaway's office after Mr. Newsom received his notice of discharge?

A. No, sir, I don't, not in Mr. Hathaway's office.

Q. Where was it?

A. It was on the floor above.

Q. Do you know whose office it was?

A. No.

Q. Was it at Station B?           A. Yes.

Q. How did you receive word of this meeting?

A. I was the only man at the Silver Gate Station at the time. I was doing routine work and I was called to the phone and he asked me if I could get to Station B.

Q. Who called you on the phone?

A. Mr. Warden, if I remember correctly. [84]

Q. About what time was that?

A. About 9:30, I believe.

Trial Examiner Myers: In the morning?

The Witness: Yes.

Q. (By Mr. O'Brien): When Mr. Warden asked you if you could get to Station B, what did you say?

A. I told him at the time I had a piece of equipment out of service and as soon as I got it back I would get the truck and get there as quickly as I could.

Q. What time did you get to Station B?

A. A little bit before 10:30.

(Testimony of Roy Shroble.)

Q. And when you arrived at this meeting place, who was there?

A. Well, Ollie Webb, Fowler, Tony Botwinis, Mr. Kalins, Mr. Warden and Mr. Newsom.

Q. Was Mr. Hathaway there? A. No.

Q. Just Mr. Kalins and Mr. Warden of the supervisors? A. Yes.

Q. What do you recall of that meeting?

A. That was the meeting when they notified the rest of us that Mr. Newsom had received his notice of termination.

Q. Yes. What was the rest of the conversation at this meeting?

A. Just the charges, why they were discharging him from service and they stated three reasons why he was being discharged.

Q. By "they," whom do you mean?

A. Mr. Kalins.

Q. What did Mr. Kalins say was the reason for Mr. Newsom's discharge?

A. Well, one reason was that—I believe it was before my time—there was an omission in the log at one of the stations. I don't know if it was at Station B, but there was an omission in the log. I can't quite remember how that went, but it was one complaint.

The other one was putting the thermostat and gauges back on the No. 2 turbine and face plates had not been cleaned. I was with Mr. Newsom on that job.

The third cause was he had missed some controls

(Testimony of Roy Shroble.)

when they were putting Unit 1 back on the line.

Q. Do you recall anything else of the conversation at this meeting?

A. Well, there was a lot of talk about different things, but knowing the three reasons is what stays in my mind as to why he was discharged.

Q. Did you say you were working on that face-plate job?      A. Yes, I was.

Q. Was it his responsibility more than yours to clean the face plates? [86]

A. Well, he was senior man; I was working with him.

Q. Is there any difference in your rate of pay?

A. At that time?

Q. Yes.      A. Yes.

Q. Though you were both classified as Grade B?      A. Yes.

Q. Do you have any knowledge as to why the numbers were left on the face plates?

A. Well, we were working Saturday at double time and Mr. Warden had asked us to finish up as soon as possible. The painters were going to paint the turbine either Sunday or Monday, I don't remember which. They had primed part of it at that time and we just left the numbers on the gauges on the faces because they had been cleaned while being calibrated and checked and just the numbers were on the face plates at the time.

Q. Were the indicators on the dials visible through these numbers?

(Testimony of Roy Shroble.)

A. Yes. In some cases, yes; in other cases, no, sir.

Q. Could you read the instruments?

A. Some of the gauges you could read because the number was right in the center of the gauge.

Q. Has every log you have turned in been absolutely perfect? [87]

\* \* \* \* \*

The Witness: I have made a lot of omissions to the log that have slipped my mind at the time. I might have done it in the morning and might not have put it in the log until the next day. I could have missed it.

\* \* \* \* \*

Q. (By Mr. O'Brien): Do you recall Mr. Warden announcing to the instrument technicians, generally, what Mr. Newsom's duties would be early in January? A. Yes.

Q. Can you fix the time?

A. It was approximately the first of the year, in January. [88]

Q. Was it before you signed the application?

A. Yes.

Q. What did Mr. Warden say about Mr. Newsom's duties?

A. He said that Mr. Newsom would have charge of routine at all stations for three months and during that time he would break in Mr. Webb at Silver Gate and Mr. Webb would break me in and I would break Mr. Fowler in for the routine work.

\* \* \* \* \*

(Testimony of Roy Shroble.)

Cross Examination

Q. (By Mr. Luce): Mr. Shroble, your group of instrument technicians did not select any person as their spokesman or leader at any time?

A. No, sir, we didn't vote on it.

Q. I didn't ask you if you voted on it, I ask you if you selected anyone as your leader?

A. No, not in particular.

\* \* \* \* \*

Q. As a matter of fact, Mr. Fowler did as much talking as Mr. Newsom at these meetings you attended at which officers of the company were present?

A. No, I don't believe so.

Q. You don't believe he did? [89]

A. No, sir, Mr. Newsom did most of the talking.

Q. Well, Fowler did some of the talking?

A. He did a little, yes.

Q. And Newsom did more? A. Yes.

Q. Now, as near as you can, give us the exact language of Mr. Warden on that morning of January 16th.

A. Do you mean about looking for other jobs?

Q. Yes.

A. Well, all I can remember is he said he hoped our family affairs were in order so that we could look for other jobs.

Q. Didn't he say, "If you fellows keep this up you will be looking for other jobs?"

A. I believe it is the way I said.

\* \* \* \* \*



(Testimony of Roy Shroble.)

Q. Did you ask him what he meant?

A. I didn't have to. You don't have to with a statement like that. [90] \* \* \* \* \*

Q. What were the family affairs that he referred to? \* \* \* \* \*

The Witness: No, because in my own mind I had a good idea what that meant, as far as I was concerned.

Q. (By Mr. Luce): As far as you are concerned he might have been kidding? A. It is possible.

Q. And at the time you didn't construe it as being any threat that you would lose your jobs if you continued your union activity?

A. I believe I did. I believe I did a lot of thinking as to what would happen if I did continue this.

Q. Was anything ever said to you after that time? A. No, sir.

Q. You continued your efforts to have the union represent you? A. Yes.

Q. And there was no prejudice against you as far as you can see from that time on?

A. No, sir.

Q. Now, as a matter of fact, when you first had this conversation with Mr. Warden, on January 15th, he was very nice and said he would help you all he could? A. At that time, yes.

Q. He also said he would furnish the list of duties you could use in your application for union recognition? A. Yes, if he could get it.

Q. Did he furnish it to you?

A. I have never seen it.

(Testimony of Roy Shroble.)

Q. You know that he did furnish you with it? That he did furnish Newsom with it?

A. If he did, I didn't see it.

Q. If he did it would be after the conversation of January 16th?

Mr. O'Brien: I will have to object, Mr. Hearing Officer,——

Mr. Luce: I withdraw the question.

Q. (By Mr. Luce): I show you Respondent's Exhibit No. 1 and will ask you to state if you have ever seen that before?

A. No, sir, I have never seen that list.

Q. Now, in your conversations in Mr. Hathaway's office the afternoon of January 15th, Warden and Kalins being present, as well as the instrument technicians, there was nothing said at that meeting about the possibility of your having to look for other jobs? A. Not that I remember, no, sir.

Q. So far as you can remember, the only time anything was said by anybody by the company, in a capacity superior to you, in regard to the possibility of your losing your jobs, was this one remark that you say Warden made on the morning of January 16th, is that correct?

A. Yes, I believe it is.

Q. As a matter of fact, when Kalins was giving the reasons for the discharge of Newsom he stated more than three reasons?

A. Not that I remember, no, sir.

Q. Well, weren't there at least four reasons given?

(Testimony of Roy Shroble.)

A. Not that I remember. I remember the three he stated as far as the job was concerned. That is all I remember.

Q. Do you remember that Kalins read from some notes he had in his hand?

A. Yes, he had some notes.

Q. Didn't he give five general reasons why Newsom was being discharged?

A. Not that I remember.

Q. Where did you get your recollection of three reasons? Why did you say three reasons?

A. Just the statements that were made. What I remember is what I told Mr. O'Brien, about the omissions of the log, the controls and the face plates.

Q. These were the only three?

A. As far as I can remember; there may have been more, I don't remember.

Q. There may have been more that you now have forgotten? [93]

A. I could have forgotten, yes.

Q. The only ones present when this remark was made, "I hope your family affairs are in order," is Newsom, Kalins, Warden and yourself?

A. No, sir, Mr. Kalins was not there.

Q. Didn't you tell us that Mr. Kalins was there?

A. No, not when that statement was made. I said Mr. Newsom, Fowler, myself and Mr. Warden. Mr. Warden made the statement.

Q. Mr. Fowler was present? A. Yes.

(Testimony of Roy Shroble.)

Q. And Newsom, yourself and Warden?

A. Yes.

Q. Nobody else?            A. No.

Mr. Luce: That is all. [94]

\* \* \* \* \*

OLLIE E. WEBB

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

\* \* \* \* \*

Q. (By Mr. O'Brien): By whom are you employed?

A. The San Diego Gas & Electric Company.

Q. Your present occupation is what?

A. Instrument technician.

Q. Grade A?            A. A. [95]

\* \* \* \* \*

Q. When did you first enter the instrument department, approximately?

A. October of '49, I believe. October of '49, I guess.

Q. Who explained your duties to you, to begin with?            A. Mr. Warden. \* \* \* \* \*

Q. (By Mr. O'Brien): After that, whom did you work with?            A. Mr. Newsom.

Q. For how long?

A. Approximately three months.

Q. Were you still learning your job when you were working with Mr. Newsom?            A. Yes.

\* \* \* \* \*

(Testimony of Ollie E. Webb.)

Q. What I am inquiring about is a meeting you had with Mr. Hathaway.

A. That was in the afternoon.

Q. That was the 15th, was it?

A. Yes, about that time. [97] \* \* \* \* \*

Q. When you arrived at the meeting place, who was there?

A. Kalins, Warden, Mr. Newsom, Fowler, Botwinis, Shroble and myself.

Q. What do you recall of the conversation?

A. Well, in general, they wanted to know why we weren't satisfied; why we hadn't given them a chance to make us satisfied, and it was just small discussions of the union.

They said it had its advantages and also its disadvantages, but he didn't feel he wanted to stand in our way. He said to do as we thought best, but to give it a lot of thought. That is about the gist of it.

Q. That is all you recall of that meeting on the afternoon of the 15th?

A. Well, the question was asked why they didn't come to them before, and someone said they didn't feel it would do any good.

Trial Examiner Myers: Who said that?

The Witness: Mr. Hathaway.

Q. (By Mr. O'Brien): Do you remember what Mr. Hathaway said in regard to that?

A. He said they certainly could, but they weren't given a chance.

Q. Now, tell us about the 10:00 o'clock meeting. Can you fix the date for us?

(Testimony of Ollie E. Webb.)

A. I couldn't tell you the exact date.

Q. Would it be about the 1st of February?

A. Somewhere in that neighborhood.

Q. How did you receive word to be at that meeting?

A. I was working at the screen house and I got called to the telephone.

Q. Where was the meeting place?

A. It was on the fourth floor in what they sometimes use for a drawing room, the engineers.

Q. At Station B?           A. Yes.

Q. Who was present?

A. Mr. Botwinis, Mr. Shroble, Mr. Newsom, Mr. Fowler, Mr. Warden, Mr. Kalins and myself.

Q. What do you recall of that conversation?

A. Well, it opened up and Mr. Kalins said, "Gentlemen, I am sorry but it is my painful duty to inform you that Mr. Newsom will be terminated." That is the way it started off and he gave the reasons.

Q. What were the reasons? [99]

A. Well, one of them was it seemed to be a shortage of work one day and they agreed that it was an omission from the log that hadn't been put down.

I believe one of them was that he couldn't get along with the supervisors and then there was some gauges put on a turbine with some screws left out or the faces were dirty or something like that, and then there was supposed to be a locked control on one of the boilers, an airflow meter. \* \* \* \* \*

Q. Did you ever miss controls in approximately

(Testimony of Ollie E. Webb.)

two years you worked in the instrument department?

\* \* \* \* \*

The Witness: Well, I recall that I neglected to turn a valve on a gauge to a gas pressure on one of the boilers.

Q (By Mr. O'Brien): If that hadn't been caught in time would the result have been serious?

A. Well, no, there is another gauge to go by, but it is very easy to miss one.

Q. You are saying there are duplicate gauges and one was reading and one was not?

A. Yes.

Q. And the operator, if he relied on the non-reading gauge, [100] could cause some damage?

A. Yes, it could. Well, in this particular case I don't think so, because he had another meter that registered flow and he would know how much he was putting in.

Q. Are you familiar with the control which Mr. Newsom missed?

A. I am not sure what control it was. I was not down to Silver Gate; I don't know which one it was.

Q. You have since become familiar with Silver Gate? A. Yes.

\* \* \* \* \*

Q. Do you know whether a failure to hook up the control would do any serious damage?

\* \* \* \* \*

A. No, there were two airflow meters there. If

(Testimony of Ollie E. Webb.)

they were both out of service, it could cause serious damage, but not with just one.

Q. So that error was about the same as you described as the one you yourself made?

A. I suppose so. [101]

Q. And has every log you have turned in been 100 per cent perfect?

\* \* \* \* \*

The Witness: No, sir.

\* \* \* \* \*

### Cross Examination

Q. (By Mr. Luce): Now, you don't know what charges of incompetence were made in respect to Mr. Newsom, in their entirety?

I will withdraw that and reframe the question.

Do you know all of the charges that were made against Mr. Newsom?

A. I know those that were brought up in the meeting.

Q. Do you remember all of them that were brought up in the meeting, now?

A. Well, I remember those four as the ones. I believe I mentioned them, if I am not mistaken. They were the ones I remember.

Q. Could there have been others and you now have forgotten them? [102]

A. There could have been.

Q. Did Mr. Newsom at any time get into an angry discussion with Mr. Warden and Mr. Kalins over his discharge?



(Testimony of Ollie E. Webb.)

A. Well, there was some mud slinging back and forth.

Q. What did you mean by that?

A. Well, there was some argument going on at the end of the discussions.

Mr. Luce: Will you please read that answer for me?

(Answer read.)

Q. (By Mr. Luce): An argument between Mr. Newsom and his superiors?

A. Newsom and Warden.

Q. Were there angry words on the part of Mr. Newsom? A. They were both arguing.

Q. As far as Mr. Newsom is concerned were there angry words towards Mr. Warden?

A. Well, yes.

Q. Now, you didn't, at any time, hear Mr. Warden or Mr. Hathaway say anything about your losing your jobs, or possibly losing them, if you went on with the union activity?

A. Well, I wasn't down at the Silver Gate Station to get in on that conversation down there. The only thing I heard of that nature was when he came up and talked to us for a short while and he said he didn't think we were going to help ourselves any. [103]

Q. He didn't think you were going to help yourselves any, is that what he said? A. Yes.

Q. Did he say what he meant by that?

(Testimony of Ollie E. Webb.)

A. No.

Q. Now, in your conversation at the time of your meeting with Mr. Hathaway, he said, did he not, that he would not stand in your way and he would help you if you wanted to join the union?

A. He said he wouldn't stand in our way.

Q. And Mr. Warden was present at that time?

A. Yes.

Q. And Mr. Kalins?            A. Yes.

Mr. Luce: I believe that is all.

Trial Examiner Myers: You said that when Mr. Warden was away you occasionally assumed some of his duties?

The Witness: Yes.

Trial Examiner Myers: When did that first happen?

The Witness: That started——

Trial Examiner Myers: Approximately when?

The Witness: I don't know, about four or five months ago, I would say. Down at the other station, it started a little bit earlier than that, maybe six or eight months.

Mr. Luce: May I ask another question?

Trial Examiner Myers: Yes, certainly. [104]

Q. (By Mr. Luce): Mr. Webb, was anybody designated as your spokesman at your meeting with Mr. Hathaway or Mr. Warden in regard to joining the union?

A. I don't believe anyone was designated.

Q. Did Mr. Fowler do some of the talking?

A. Yes, I believe he did some of the talking.

(Testimony of Ollie E. Webb.)

Q. And Newsom did some of it?

A. Yes, Mr. Newsom did most of the talking.

\* \* \* \* \*

Redirect Examination

Q. (By Mr. O'Brien): When did you receive the last classification of instrument technician A?

A. I couldn't tell you the exact date, but it was about four or five months ago.

Q. That would be some time in March or April?

A. I suppose so.

Q. Now, bringing you back again to the morning meeting when Newsom's discharge was discussed, do you recall Mr. Kalins saying anything at that time about a possible reclassification for you? [105]

A. Mr. Hardway had written a letter or said something for some of us. I don't remember much about that.

Q. Does anything come back to you about your name being mentioned, specifically, by Mr. Kalins?

A. Well, the only thing that I remember my name being mentioned by Mr. Kalins was that he was more or less using me as a yardstick against Mr. Newsom.

Q. What did he say?

A. He said that you could send me out to do something and it would be done and he said he couldn't depend on Newsom. Those were about the words he said.

Q. Did he say anything about considering you as an A rating as a technician?

(Testimony of Ollie E. Webb.)

A. It seems to me like something like that was mentioned, but I don't recall whether it was at that time or afterwards.

Q. Well, at some other time, then?

A. Well, I was told that I was considered for an A technician.

Q. But do you recall some qualifications being put on that by Mr. Kalins?      A. No, I don't.

Q. Do you recall Mr. Kalins say, in substance, that Newsom had not taken as much interest in the job as Webb had and that Webb had been considered far an A rating as technician, but the union activity had changed the picture and they didn't know what would happen until things were settled?

A. I believe I recall something to that effect.

Trial Examiner Myers: When was that statement made?

The Witness: At the morning meeting.

Trial Examiner Myers: That would be the February 1 meeting?

The Witness: Yes, at the meeting that we were notified of Newsom's discharge.

Trial Examiner Myers: Who made that statement?

The Witness: Mr. Kalins. [107]

\* \* \* \* \*

### Redirect Examination

Q. (By Mr. O'Brien): Now, that I have refreshed your recollection, what do you recall Mr.

(Testimony of Ollie E. Webb.)

Kalins saying about union activity in that connection?

A. Well, he said something to the effect that it was up to us if we wanted a union and in a lot of ways it would be easier for him, but if we have a union contract we would have to live up to it to the letter.

Q. Tell me, did Mr. Kalins say that Mr. Webb had been considered for an A rating, but that union activity had changed the picture and the company didn't know what would happen until things were settled?

A. He didn't say the company, he was talking about himself, personally.

Q. That they didn't know what would happen until things were settled?           A. Yes.

Q. He said that?

A. To the best of my recollection.

\* \* \* \* \*

THOMAS FOWLER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

\* \* \* \* \*

Direct Examination

Q. (By Mr. O'Brien): Mr. Fowler, where are you employed?

A. San Diego Gas & Electric Company.

Q. Your present classification is what? [109]

A. Instrument technician B.

(Testimony of Thomas Fowler.)

Q. And how long have you been so classified?

A. Since last November. I worked since July as a helper in that department.

Q. You became a helper in the department in July?

A. I came into the department as a helper in July.

Q. Mr. Fowler, how long have you been working for the company? A. Since March, 1949.

Q. Were you present at the conversation with Mr. Warden at the Silver Gate Station on the morning before you signed General Counsel's Exhibit No. 2? A. Yes.

Q. That is January 15, 1951? A. Yes.

Q. Tell us what you recall of Mr. Warden's conversation and what anyone else present said?

A. Well, the evening before we had contacted the union and so that morning Newsom and Schroble and myself informed Mr. Warden we intended to join the union. We said we had contacted them and proceedings were on the way. Mr. Warden seemed enthusiastic, very nice, and immediately offered to help in any way he could.

Q. What was the next thing that happened that day?

A. That afternoon Schroble, Newsom and myself were informed by telephone call that Warden would come down to pick us up and he had arranged a meeting with Mr. Hathaway at Station B. He came down and picked us up and took us to the meeting in Mr. Hathaway's office. We were joined

(Testimony of Thomas Fowler.)

there by Webb and Botwinis who were working at the other station.

Q. What took place in Mr. Hathaway's office?

A. It was rather a premature thing. We weren't prepared to say anything and Mr. Hathaway was apparently without anything to offer so both sides sat there. I think Mr. Hathaway asked if we had anything to say, and I think Mr. Newsom said he understood we were here to listen. I don't remember the exact words, but that was more or less the sum of it.

Finally, Mr. Hathaway said they were sorry we took the action and why hadn't we come to him first. I believe he mentioned that this particular department might not be allowed to join the union due to the confidential nature of some of the papers we had access to. He said he didn't believe we would gain anything by joining the union and that we would lose certain privileges that we have now as non-union members.

Q. Do you recall anything else of that conversation?

A. No, there wasn't a great deal said.

He asked us to think it over and to submit a letter with our desires in it and he would take it through the channels.

Q. After leaving Mr. Hathaway's office, what did you do?

A. We went down to the union and had this statement notarized in triplicate and sent one to

(Testimony of Thomas Fowler.)

the union, one to Mr. Sherwin, the president and kept this one.

Trial Examiner Myers: When you say, "this statement," you mean the document which has been received in evidence as General Counsel's Exhibit No. 2?

The Witness: Yes.

\* \* \* \* \*

Q. Did you have a conversation with Mr. Warden after the signing of General Counsel's Exhibit No. 2?

A. The following morning. We have an assignment session each morning and talk over what has been done and what needs to be done. He seemed very pessimistic as to our chances of getting into the union and in the conversation made a statement that he hoped our affairs were in order and we assured him we were prepared to look for other work, if necessary.

\* \* \* \* \*

Q. Did you attend a meeting at Station B when Mr. Newsom's discharge was discussed?

A. Yes. [112]

\* \* \* \* \*

Q. (By Mr. O'Brien): Tell us what you recall of that meeting.

A. Well, Mr. Webb and Mr. Botwinis and myself were working in Station B at the time. We were notified in the morning to be at the meeting with Mr. Warden; that he was coming down to meet him in the office and there was no reason



(Testimony of Thomas Fowler.)

given, although we knew from other sources what it was about.

While we were waiting for Mr. Schroble to get there, he was at Silver Gate at the time, there was some discussion of the union activity between Mr. Kalins and the group and Mr. Kalins said he had talked it over with other foremen in the plant who were union men, and he found that he could get along all right if he lived up to the letter of the union contract. He said we would lose certain privileges we had such as half a day shopping at Christmas time and other things of that nature. He also made a statement to Mr. Webb about his proposed promotion coming in some time during that meeting and then when Mr. Shroble came down they informed us that Newsom had been discharged; that he had been offered a chance to resign, to transfer or be discharged and then the reasons were given. The three reasons that have been mentioned before were stated.

Q. What I want is your recollection, not somebody else's. [113]

A. The three specific charges that were made were the omission in the log, the lack of work in the log, which Newsom defended by saying there had been an omission, and it was left that way.

The gauges, which again he defended by the fact that it was Saturday, with double time and it had been expressed to him to finish up and get out and that they would be painted later.

Then, the air flow meter. \* \* \* \* \*

(Testimony of Thomas Fowler.)

Q. Have you ever been guilty of an omission similar to that of the air flow meter as described by Mr. Kalins?

\* \* \* \* \*

The Witness: Well, yes. I have left all the fuses out of a set of meters that you could not have told anything about the boiler at all. [114]

Q. (By Mr. O'Brien): And has every log you turned in been complete in all particulars?

A. No.

Trial Examiner Myers: What happened?

The Witness: Mr. Warden caught the omissions and I put them back in.

Trial Examiner Myers: What did he say to you about it?

The Witness: I don't remember. Nothing, in particular, other than I should be more careful. There was no recrimination at that time.

Q. (By Mr. O'Brien): All of your logs would not be 100 per cent complete?

A. On the routine, no. It has been very seldom that the routine has been kept up to date while I have been there. There aren't enough men to keep it up. We get the highlights and let it go at that.

\* \* \* \* \*

#### Cross Examination

Q. (By Mr. Luce): Calling your attention to the conversation with Mr. Warden on the morning of the 16th, I believe you told us that he was

(Testimony of Thomas Fowler.)

very pessimistic about your chances of being taken into the union?

A. That was one thing he said. I don't remember the exact wordage.

Q. In substance, that was what he said?

A. Yes.

Q. Then, he said he hoped you were getting your affairs in shape? A. Yes.

Q. Then you said we assured him we were prepared to look for other work? A. Yes.

Q. He didn't say to you that you better be prepared to look for other work? A. No, sir.

Trial Examiner Myers: Did you make that statement that you were prepared to look for other work?

The Witness: I believe that was made exactly that way, I believe so, yes.

Trial Examiner Myers: How did you happen to say that?

The Witness: Well, from the nature of the proceeding it could only mean one thing. That we would have to get our affairs in order as far as the company was concerned, that is, financially.

Trial Examiner Myers: Meaning what?

The Witness: Meaning we could use our jobs over the union activity.

Trial Examiner Myers: What did he say when you made that remark?

The Witness: I believe the conversation was dropped there.

Q. (By Mr. Luce): You say that Mr. Warden

(Testimony of Thomas Fowler.)

expressed himself as being pessimistic in regard to your chances of joining the union?

A. Yes.

Q. Then, he said, "I hope you have your affairs in good shape"? A. Yes.

Q. Putting these two together, did you not realize that he meant he hoped you had your application in order to assist you in joining the union?

A. I didn't take it that way, no.

Q. He did, at that time, offer to help you, did he not? A. Yes.

Q. And did he furnish you or Mr. Newsom with a job classification sheet? A. Yes.

Q. He told you at this conversation on the 16th that he would furnish you with a job classification sheet?

A. I believe so. He did on the 15th anyway, I don't remember about the 16th. [117]

Q. On one day or the other? A. Yes.

Mr. Luce: I believe that is all.

Trial Examiner Myers: At this termination meeting of February 1st—you used the word "termination," because somebody used it before you—but at the meeting on February 1st could you tell us about what was said about Mr. Webb's proposed reclassification and who said it?

The Witness: Mr. Kalins, sir, along with the union discussion made the remark that Mr. Webb was up for reclassification as an A technician, but that there was some doubt about it now; that the

(Testimony of Thomas Fowler.)

union activity would hold it up until it was settled.

\* \* \* \* \*

Mr. O'Brien: The General Counsel rests.

I don't think there can be any inference, but I suggest a stipulation that Mr. Botwinis is on military leave.

Mr. Luce: That is correct. [118]

Trial Examiner Myers: He is not available?

Mr. Luce: At least, he is no longer connected with the company. Where he is, I don't know, but he is in military service.

\* \* \* \* \*

HAROLD L. WARDEN

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows: [119]

\* \* \* \* \*

Direct Examination

Q. Now, Mr. Warden, what is your present position? A. Instrument engineer.

Q. Employed by whom?

A. San Diego Gas & Electric Company.

Q. How long have you been employed for the company?

A. I first went to work in August, 1947.

Q. When did you first become instrument engineer? A. March, 1949.

Q. And will you tell us, briefly, what the duties of an instrument engineer are?

A. My duties at the present time consist of all

(Testimony of Harold L. Warden.)

instrumentation pertaining to both stations, Station B and Silver Gate,—

Q. Let me interrupt you there to ask if your duties were the same during 1949, '50 and '51?

A. Yes, they have been the same during that time.

Q. Also, that the record may be clear, Station B is a power plant operated by the San Diego Gas & Electric Company at the foot of Broadway in the City of San Diego? A. Yes.

Q. And the Silver Gate Station is another power plant operated by the San Diego Gas & Electric Company situated out in the east end of town, I believe? [120]

A. It is at the foot of Sampson Street.

Q. Do your duties as instrument engineer take you to both plants? A. Yes, they do.

Q. Will you proceed further and tell us what your duties are and were during all the time involved herein, 1949, '50 and '51?

A. My duties consist of seeing and servicing the routines at both stations; satisfying the desires of station chiefs; that is, Mr. Zitlaw of Silver Gate and Mr. Campbell of Station B; working in direct alliance with Joe Kalins, efficient engineer, in development work; installation of new instrumentation; the change of design of existing equipment, and in general covering both stations, in full responsibility of instrumentation.

Q. What would be your duties in respect to

(Testimony of Harold L. Warden.)

what is called instrument technicians, both A and B?

A. In principle, the instrument technicians Grade A are directly responsible to me, and the instrument technicians Grade B are likewise responsible to me, but usually they work through the direction of instrument technician A, if the instrument technician A can be at a particular Station. But as previously stated, my work is between two separated stations, some distance apart, and therefore I can't be at either place simultaneously. Therefore, we have the classification of instrument technician A, as it is our duty to try to cover both stations to the best of our ability under all existing conditions.

Q. Will you tell us what the duties of the instrument technicians are?

A. Instrument technicians are assigned the duties and are required to be able to overhaul, completely, any of the existing equipment that we have at either station.

Q. By equipment, you mean instruments?

A. Yes, being able to satisfactorily perform the routine work as outlined in explicit details at both stations.

Q. Will you give us some idea of the form of the work of these instrument technicians?

A. All of our work, including the instrument technician work, is of such a nature that errors, lack of accuracy, being lackadaisical, or, perhaps, you might say, not caring too much or not paying

(Testimony of Harold L. Warden.)

strict enough attention to the job, can be very detrimental in the matter of station efficiency. It even could, under hazardous operation, cause plant damage or personnel damage.

Q. In order that the Board may have the information on the record, will you just tell us what the capacity is, first of the Silver Gate Station?

A. At the present time, Silver Gate is rated at 160,000 megawatts.

Q. At Station B?

A. Approximately 100,000 megawatts. [122]

Q. These two stations supply electricity to the City of San Diego and to the County of San Diego?

A. Yes, we cover the area as far north as Capistrano, east to the Borego Desert and south to the Mexican Border.

Q. There are no other plants other than the two mentioned?

A. There are no other plants in San Diego County.

Q. These men, technicians B, have the job of keeping in order and inspecting the instruments in these two plants?

A. That is correct.

Q. And an error in their work or carelessness in their work might cause great damage to the plant, might it not?

A. It could very easily.

Q. What effect might it have on the general affairs of the city in the production of electricity?

A. In the event there was a loss of one or more units it would curtail the supply of electricity in



(Testimony of Harold L. Warden.)

San Diego County and the City of San Diego to quite a large extent.

Q. What do you mean by "unit"?

A. At Silver Gate we have three units. One 40,000 and two 60,000 megawatts.

Q. Now then, Mr. Warden, when did you first become acquainted with Mr. Newsom?

A. When he came to the instrument department as instrument technician while Mr. Geiger was the instrument engineer. At that time I was an instrument technician. [123]

Q. That was about when?

A. That was about two and one-half years ago.

Q. Was Mr. Newsom under you at that time?

A. No, sir, he was not. He was under the direct supervision of Mr. Geiger.

Q. When did you become instrument engineer?

A. I became instrument engineer in 1949.

Q. At that time, where was Mr. Newsom?

A. At that time Mr. Newsom was at Station B.

Q. And after you became instrument engineer, did Newsom come under your direct control?

A. Yes.

Q. Will you give us a brief summary of the character of the work of Mr. Newsom from the time you became instrument engineer until his notice of discharge?

A. Mr. Newsom's work was spasmodic. I believe that would be good terminology for it. There were periods at which times he did very satisfactory work, and other periods of time where it was not

(Testimony of Harold L. Warden.)

satisfactory and could not be claimed so because of the manner in which it was performed. It did not create and establish within the minds of supervisors, operators and station chiefs, as well as other men in supervision, a confidence in his work. The manner in which he was performing his work was not satisfactory, not only to myself, but to many others.

Q. When did you first discover this defect of his work? [124]

A. The first time I found there was sufficient disturbance among the supervisors, station chiefs and supervising personnel, in general, was, I believe, in May, 1949.

Q. What did you do about it?

A. At that time, particularly, I spoke to Mr. Newsom in private and explained to him that the type of work we were doing necessarily required considerable confidence from the operating personnel and supervisors and I had been informed by a reliable source, namely, Mr. Zitlaw, the station chief at Silver Gate, that he had not been satisfied in the nature which Newsom was performing.

He was spending considerable time at Silver Gate without direct supervision because at that time we had additional work to be done at Station B and I was spending considerable time at Station B. I did not observe this lack of successful work, personally——

Q. I am asking you now about your conversation with Newsom?

(Testimony of Harold L. Warden.)

A. I explained to Newsom that the nature of our work is such that we had to establish confidence with the operating men and also the station chiefs and that I thought he was capable of doing it; that he should do it. He assured me he could do it and that he was satisfied in his own mind that he would be able to do that work thereafter.

Q. Now, what did you observe in regard to the character of his work after that conversation?

A. A definite measured output, seemingly to fulfill the requirements of the job almost to the letter, but nothing more.

This continued for a period of perhaps two or three months and then, again, returned to this period of unsatisfactory work with short periods of doing a pretty good job.

Q. What did you do then?

A. At that particular time I contacted John Hardway who was my immediate superior as efficiency engineer.

Q. Did you have another conversation with Mr. Newsom?

A. Before I answer that, am I at liberty to make a correction of my earlier statement?

Q. Yes.

A. The date is October, 1948.

Q. That is when you had the first conversation with Newsom?

A. Yes, it was in October, not May.

Q. October, 1948?

Trial Examiner Myers: 1948?

(Testimony of Harold L. Warden.)

The Witness: No, October, 1949.

Q. (By Mr. Luce): You had a conversation with Mr. Hardway?      A. That is correct.

Q. Did you, after that, have a conversation with Mr. Newsom?

A. I spoke to John in regard to his letdown, his work output and not being too satisfactory. John said perhaps if he had a talk with him the results would be better.

Q. By "John," do you mean Mr. Hardway?

A. Yes.

Q. Were you present when Mr. Hardway talked to him?      A. Yes.

Q. When was the conversation between you and Hardway and Newsom?

A. I believe it was in May, 1950.

Q. May, 1950?      A. Yes.

Q. Will you tell us what that conversation was?

A. At that time Mr. Hardway spoke to Newsom and told him that he was sure he was capable of producing a much higher grade of work than he had been doing.

Mr. Newsom asked for a specific example, and one of the examples at that particular time was as shown by the log that the quantity of work produced by Newsom at Station B was not very large. It was during that period of time that this omission, lack of having a complete or 100 per cent log, was brought to light.

However, that was only used as one of the many

(Testimony of Harold L. Warden.)

examples, and was offered to Mr. Newsom, as an example, not as the only case.

Q. What did Newsom say during this conversation when you were present?

A. He made the statement at this particular meeting that he liked instrument work and was very desirous to make good in it. Other details of the conversation at this time I cannot remember.

Q. What occurred after that conversation with Mr. Hardway?

A. After that a very similar return of periodic good work followed by periods of poor work started and continued through until September, 1950.

Q. What happened then?

A. At this time I went to Mr. Kalins, who had become efficiency engineer due to Mr. Hardway being on military leave, and explained that we had had one previous meeting with Newsom; that I had also spoken to Newsom once myself before that.

My recommendation to Mr. Hardway was that he either transfer or remove him from the instrument department.

Q. Was your recommendation to Mr. Hardway or Mr. Kalins?      A. To Mr. Kalins.

Q. Then what happened?

A. Mr. Kalins went to Silver Gate with me, we called Newsom into the office, and Mr. Kalins started questioning Newsom in regard to his work output, the sloppiness in nature, the lack of exactness and preciseness of the work.

(Testimony of Harold L. Warden.)

Mr. Newsom, again, asked for specific examples, one of which was quoted in regard to the gauges installed on Unit II in such a manner that they were not satisfactory as far as operations were concerned. That was offered as one of a number of instances. It was not the only one, it was just a specific instance.

During this meeting in which Kalins, Newsom and myself were present, the point was brought up that if Newsom's work did not become satisfactory and remain so, it would be necessary for him to leave the department. Mr. Newsom questioned me twice on that, asking me what I meant, and I said that he would be through, that he could no longer work in the instrument department. I repeated that twice during the meeting.

Q. What was his attitude at that time as expressed by his words?

A. Following that meeting a very definite appearance of measured output.

Q. Before you come to that, what was the attitude of Mr. Newsom at this meeting of you, Kalins and Newsom in regard to his showing of respect to you?

A. A considerable disrespect.

\* \* \* \* \*

Trial Examiner Myers: Will you reframe the question, Judge?

Q. (By Mr. Luce): What did Mr. Newsom say and do in that meeting. [129]

A. The exact wording I cannot remember, but

(Testimony of Harold L. Warden.)

his respect to both myself and Mr. Kalins was of utter disrespect. He had no respect whatsoever for either Mr. Kalins or myself.

Q. How did he express it? Give us, in substance, what he said.

A. In asking for a specific example, and when they were given to him, coming back with an excuse, perhaps you might call it an excuse, such as the gauges were installed on Saturday.

I believe his comment was something to this effect: "You certainly wouldn't expect me to spend double time merely wiping off the faces of gauges." In other words, criticizing in a very sarcastic manner, and apparently trying to show an influence of rebellion against honest criticism.

Q. Was anything said by you or Kalins in regard to his attitude toward you at that time?

A. Yes, he was told if his attitude did not change and he show proper respect not only to myself but to other superiors his termination of employment would be requested.

Q. Who said that? A. Mr. Kalins.

Q. After that meeting what occurred?

A. The work output was of a measured nature, just barely doing enough to fulfill the requirements of the job.

It was following the September meeting that we lost Unit I at Silver Gate. That was a burnup unplanned, I might add, and it was 40,000 megawatts cut out from our system which made quite a hole in our total capacity.

(Testimony of Harold L. Warden.)

As you might visualize, starting the first of September, the load demand by the consumer gradually increases by the additional use of electricity for lighting, so it was with much emphasis that we placed Unit I in primary importance getting that machine back on the line and into operating condition to the best of our ability.

We were also saddled with the continued testing on Unit No. III and these tests were to determine modifications necessary to that unit which had only been installed, I believe, in August of 1950. It was very necessary that we obtain this information and tests and so forth, from Unit No. III so that ample time from the manufacturer might be had to produce equipment necessary to make that change.

This change is now in progress at Silver Gate and we hope it will be completed in possibly two or three more weeks.

Q. Well, what work after September was done by Mr. Newsom?

A. Mr. Newsom, at the beginning of Unit I overhaul, was offered the opportunity of becoming lead man because of his seniority. Even though a lead man does not carry any additional compensation, we usually term lead man without official title. He was offered the opportunity to show himself as a lead man to lead out in the Unit No. I overhaul. I gave him the Unit No. I overhaul schedule folder complete and told him to proceed with the overhaul the best he could; that in any



(Testimony of Harold L. Warden.)

event any difficulty arose on the overhaul he was not familiar with and did not understand or could not complete satisfactorily, he should contact me and we would get together on it and complete it in a satisfactory manner. That has been my instruction to all men and I am sure they will substantiate that.

Q. Let's get the factual part. How long did Mr. Newsom take on the overhaul program?

A. The overhaul extended on through until after the 1st of January.

Q. Then, what did you do, on or about the same time, in regard to change of his duties?

A. Somewhere near the 15th of January, just preceding the 15th—I believe the 15th of January arrived on a Monday and it was the week previous to that that I told Mr. Newsom it was our plan to use him on the routine at Silver Gate from the 15th of January until the last of January, exclusively.

In other words, he would be on routine at Silver Gate for the remainder of the half of the month of January. Starting with the 1st of February, it was our desire to use him as routine man at both stations. The routine can very nearly be handled by one man, except in some instances of tests where it is physically impossible for one man to be in two positions.

Q. Did you have any opportunity to observe the character of the work he had performed from September to January on the overhaul project?

(Testimony of Harold L. Warden.)

A. Only in a very limited manner because of the duties required of me on Unit III tests and other related duties.

Q. When did you first learn of the rumor of the technicians to become members of the union?

A. My first knowledge of that was on the morning of January 15, 1951.

Q. And to whom did you talk at that time?

A. Fowler, Newsom and Shroble met in my office that morning and they informed me they had had a meeting the night before, at which time they discussed the instrument men joining the union. However, nothing had been settled to date.

Q. What did you say to them?

A. I told the men I would assist them in any manner that I could, with the understanding, of course, that in my position as instrument engineer I could not guarantee them any specific things without first getting a release from Mr. Kalins and the proper supervisors above.

Q. Then what next happened in regard to the technicians?

A. During this time in the morning there was general conversations in regard to their union ideas. I don't recall whether it was Newsom or Fowler, but one or the other brought up the point of comparisons between the existing salaries of our company and the salaries with the companies up north. [133]

After the talk with the men, perhaps 35 minutes to an hour, I came to Station B at which time I

(Testimony of Harold L. Warden.)

contacted Mr. Webb and Mr. Botwinis, who were working at Station B. I talked to them for a matter of some 15 to 20 minutes and made the same statements to them that I had previously made at the Silver Gate Station, namely, that I would assist them in any way I could by producing records, figures, facts or anything I could produce in a manner not exceeding my ability or going over the heads of my superiors.

After that I went to Mr. Kalins' office, reported to him the information the men had passed to me. Mr. Kalins and I went to Mr. Hathaway and talked to him about that and Mr. Hathaway said if the men desired a meeting with him that he would be very happy to arrange such a meeting.

I came back down from Mr. Hathaway's meeting with Mr. Kalins and I talked to Mr. Webb and Mr. Botwinis and explained to them what Mr. Hathaway had offered, but had not requested. It was an offer of openness on the part of Mr. Hathaway that if the men desired a meeting he would like very much to talk with them, but Mr. Hathaway's instructions to me was not to make that a form of request from him.

I called Silver Gate and explained to them the same reason of this meeting. I don't recall who said it, either Newsom or Fowler, but the statement was made, "Well, I don't see how it would do any good, but it can't do any harm." [134]

I brought the men up from Silver Gate and we all met in Mr. Hathaway's office. Mr. Hathaway,

(Testimony of Harold L. Warden.)

Mr. Kalins, Mr. Newsom, Shroble, Fowler, Webb and Botwinis, together with myself, were present. I believe Mr. Hathaway's opening statement was, "Who is the spokesman for your group?" He was answered that no one had been appointed officially as spokesman.

Q. Do you know who made that statement?

A. I think it came from all persons involved. I don't believe there was an exact statement that there had been none, but there was a blank look on their faces and a negative head shaking that there had not been an official spokesman appointed.

\* \* \* \* \*

#### HAROLD L. WARDEN

a witness called by and on behalf of the Respondent, having been previously duly sworn, resumed the stand and testified further as follows:

#### Direct Examination—(Continued)

Mr. Luce: Will the reporter please read the last few questions and answers at the end of yesterday's hearing?

(Record read.)

Q. (By Mr. Luce): Will you repeat, briefly, what was said at that meeting with Mr. Hathaway?

A. We met in Mr. Hathaway's office. Mr. Hathaway's opening question was, "Who is the spokesman for the group?" No spokesman was indicated as having been named.

From that point, Mr. Hathaway said, "What is

(Testimony of Harold L. Warden.)

this all about?" He said something to that effect and then I believe Mr. Newsom made the remark, "We came up here to listen, and not to talk." Mr. Hathaway asked the men, "What are you dissatisfied with," or "Is it anything other than money matters?" The entire group assured Mr. Hathaway that money or wages were the only items involved. Mr. Hathaway asked the men why they had not come to him first, and they told him they felt it would not have done them any good; that by going to the union they felt it was their best manner in obtaining their demands for more wages.

Mr. Hathaway explicitly informed the men of the company's enjoyable relations with the union at the present time. He said that we had never had any real difficulties. Of course, there had been negotiations between the union and the company which had gone to arbitration, but the relationship between the company and the union had been excellent. Mr. Hathaway said it made no difference whether the men worked as a union group or not; that it had worked successfully in other departments where the men belonged to a union.

Mr. Hathaway suggested to the men that they consider the advantages of joining the union and of not joining the union versus the advantages and privileges which they now have as not being members of the union. He left this decision totally to them and told them to consider, that they should well have established in their minds their desires and their wants.

(Testimony of Harold L. Warden.)

At this particular meeting it was brought out that no official action had been taken as far as asking a union to be their representative at that time.

Q. You stated that it had been brought out. Who stated that? [139]

A. It was the men in the instrument department, Botwinis, Fowler and Newsom. They said that at that particular time there had not been any official action taken as far as asking a union to be their representative.

Q. Then what further was said by either Mr. Hathaway or members of the instrument group?

A. I reiterated my statement that I would assist the men in any manner that I could. Mr. Hathaway substantiated that and said he would likewise work with the men through me in any manner he could, such as supplying them with information that might be necessary for them to prepare a complete and satisfactory demand or request for money.

Q. Now, what was the final statement made, if any, by the men of the instrument group when the meeting closed?

A. The meeting was concluded by the statement from the men that they would consider and let us know at a later date their official desires or a decision.

Q. Now this meeting was in the afternoon of the 15th, is that right?      A. Yes.

Q. Did you talk to the men again on that date?

A. Yes.

(Testimony of Harold L. Warden.)

Q. With whom?

A. After we left Mr. Hathaway's meeting we all went down to the instrument shop at Station B. There was a general conversation; the specific details at that particular meeting I do not remember. It was a general discussion of whether or not the men could or could not receive an increase in salary. There was no specific talk in regards to whether or not the men would or would not join the union. The question primarily discussed after the meeting was whether or not the men would be able to obtain more money.

Q. When did you next talk to them?

A. The following morning, which is January 16th.

Q. And with whom? Where did this conversation take place?

A. It was at Silver Gate Station in my office, about 7:30 in the morning.

Q. Who was present?

A. Newsom, Fowler, Shroble and myself.

Q. Tell us what you said at that conversation.

A. At that meeting Mr. Newsom and Mr. Fowler informed me that official action had been taken in the form that they had dictated a letter, copies of which were sent to Mr. Sherwin and also to Mr. Jewett.

Q. What was said?

A. Following that official declaration of their intentions to continue with union activities, I suggested to the men that they have their facts, figures

(Testimony of Harold L. Warden.)

or substantiating evidence, and so forth, in regard to their demands in very good condition; that it would be necessary for them to have a good clean case for their demands for more money. I advised the men to think this over very carefully and not go up to the union with a case of demands for more money without supporting facts; that they should have all of their affairs connected with the union activities in first-class condition before they presented it, because if they should present a demand for more money and not have it substantiated with facts and figures, undoubtedly their demands would be refused. In the event their demand would be refused, it would be doubly hard for them to again open demands for more money.

Q. Did you offer to do anything at that time to assist them?

A. No specific offers at that particular time.

Q. You did prepare a job classification?

A. That request was made to me after that time.

Q. You did furnish them with this document that we have in evidence here, Respondent's Exhibit No. 1?      A. Yes, I did.

Q. At that meeting you have just spoken about, on January 16th, did you say to these men or in the presence of Newsom or any of them, "Your position doesn't look so good. If I were in your shoes, I would get my affairs in order as you might be looking for another job"?      A. No, sir.

Q. Did you say anything similar to that or with similar meaning? [142]



(Testimony of Harold L. Warden.)

A. As near as I can remember my statement to the men at that time was that they should be prepared to push their demands for more money in a business-like manner and in a complete manner.

Q. Did you say anything to them from which a meaning could be taken that they are liable to be out of a job or are liable to have to look for a job because of their union activities?

A. No, sir.

Q. Did you at that time say to any of them that "If you fellows keep this up you will be looking for another job"?

A. I did not.

Q. Did you say to them or in their presence, or at any other time, "You better have your family affairs in order so you can look for another job"?

A. No, sir.

Q. You never said anything like that?

The nearest I said to that was "their personal affairs."

Q. In what connection did you say that?

A. In regard to their demands for more money.

Q. Was it different than what you have already told us?

A. No, sir.

Q. Now, after this meeting of January 16th, was the matter again discussed with the men before January 30th or 30th?

A. Yes, on several occasions before working hours at Silver Gate we talked about the demands for more money. [143]

Q. And what was said on those occasions?

A. On one of these occasions the question was

(Testimony of Harold L. Warden.)

put to me, during the conversation talking about instrument men's work, as compared in the San Diego Gas & Electric Company to other utilities up and down the coast, if the comparison would be made if and when the men asked for more money. It was at one of these meetings that they asked if I could obtain for them a job classification from our company.

I told them I could, and Newsom said, "Yes, we might as well get it if nothing more than for laughs."

Q. Did you obtain that?

A. Yes, it required about three days to have this job classification secured by going through my immediate superiors to the personnel department.

Q. When was it determined and in what manner that Newsom's job should be terminated?

A. It was on January 30th at a regular meeting which is held once a week. This meeting is called by Mr. Hathaway and his immediate men working under him, station chiefs, efficiency engineer, and so forth. At this meeting Mr. Kalins and myself were present.

Q. Before you come to that, tell us who else was present at this meeting.

A. Mr. Hathaway, Mr. Zitlaw——

Q. Can you tell us what position they occupy with the company? [144]

A. Mr. Hathaway is superintendent of electrical production.

Q. Mr. Zitlaw?

(Testimony of Harold L. Warden.)

A. Station Chief at Silver Gate; Mr. Campbell, Station Chief at Station B; Mr. Kalins, Efficiency Engineer, and myself, Instrument Engineer.

Q. Then state what occurred at this meeting.

A. At this meeting Mr. Kalins and myself presented a proposed training program for the instrument crews. This program was discussed by all members present and a time set as to when the class would be started. The reason for the time being in the immediate future was the necessity of getting the training program completed prior to overhaul.

After this proposal had been discussed and accepted unanimously by all present, the question came up, "How are your men doing in the department?" I believe Mr. Hathaway is the person who directed the question to me. I said, "the men were all doing fine except Newsom." At this time further discussions were had in regard to why Newsom's output of work was not satisfactory. It was then asked, "What should we do about this man?"

After discussing it in some detail among all of us present, it was unanimously decided that the man be given his termination of employment the following day.

Q. During the discussions was it brought up or discussed at that time if it had anything to do with his union activity? [145] A. Yes.

Q. What was said about that?

A. Mr. Hathaway said that in an earlier meeting that he and Mr. Jewett were talking and Mr. Hathaway told Mr. Jewett that one of the men, and

(Testimony of Harold L. Warden.)

I am sure Mr. Hathaway did not mention any one specifically——

Trial Examiner Myers: Just tell us what you know. You were not present at this meeting?

The Witness: No.

Trial Examiner Myers: Tell us what Mr. Hathaway told you.

The Witness: Mr. Hathaway told me that he had told Mr. Jewett that one of the men who was in the group that were making application to become members of the union was under a shadow because of the fact of unsatisfactory work. Mr. Jewett's reply, as stated by Mr. Hathaway, was that if a man was in our department and was not doing satisfactory work that it would not be necessary to retain him in any manner and it would have no effect whatsoever on the men's union activity or the application for membership.

Q. (By Mr. Luce): Mr. Jewett, at that time, was business agent for the union, is that correct?

A. That is correct.

Q. What else was said, if anything, at that last meeting in regard to union activities?

A. I recall nothing further said about union activities. [146]

Q. When they discussed the work of Mr. Newsom, did you go into details about what had been the character of his work or the quality of his work?

A. Yes.

Q. Was it discussed by all of those present?

A. Yes.

(Testimony of Harold L. Warden.)

Q. You say the decision was unanimous to terminate his employment? A. That is correct.

Q. That was held on January 30th?

A. Yes.

Trial Examiner Myers: All persons at that meeting were supervisors?

The Witness: Yes, all persons who attended the meeting were in the supervisory status.

Q. (By Mr. Luce): The next day were you present at a meeting wherein Mr. Kalins told Mr. Newsom that his job had been terminated?

A. Yes, I was.

Q. I should say his employment was terminated.

A. Yes, I was.

Q. Who was present?

A. Mr. Kalins, Mr. Newsom and myself.

Q. That meeting was on January 31st?

A. Yes. [147]

Q. There has been something said about it being on the 1st.

A. It is my recollection that it was on the 31st.

Q. Who was present?

A. Mr. Kalins, Newsom and myself were at that meeting.

I had brought Newsom from Silver Gate to that meeting per my instructions from Mr. Kalins of the previous day.

He told Newsom that it was his unpleasant duty to inform him that his termination of employment would be effective two weeks from that date, estab-

(Testimony of Harold L. Warden.)

lishing February 14th as the actual date of completion of employment.

Mr. Kalins told Mr. Newsom the reasons for his discharge were as follows: His lack of ability to cooperate with his superiors; his unsatisfactory work, both in the form of quantity and quality; that his work had not been satisfactory because of the sloppy or inaccurate, incomplete manner in which he had performed his work; that his work output had been measured output, just barely enough to fulfill the job; that due to his inaccuracy and sloppy nature of work a loss of confidence had been brought about in the operating personnel and supervisory personnel because of the dependability of the instruments, and so forth, had created a feeling in the supervisory men that they couldn't depend on that equipment.

He was also told that his lack of initiative or desire to become a leadman and to lead out in the crew, due to the fact he was a senior man, was another reason for his discharge. [148]

Q. What did Newsom say?

A. Newsom said he couldn't understand that, that he felt it was a direct blow in regard to the men and an endeavor on the company's part to stop their union negotiations, and that he would like the statements made in the presence of the entire group.

Q. Go ahead and tell us what was said by any of the people present at this first meeting.

A. Newsom became quite highly indignant—

(Testimony of Harold L. Warden.)

Mr. O'Brien: I move the last remark be stricken and the witness be cautioned.

Trial Examiner Myers: Just tell us what he said.

The Witness: Mr. Newsom made the statement that he would like this meeting to be called for the reason of putting me, and named me by name, on the spot before the men.

Q. (By Mr. Luce): Do you remember anything else?

A. He asked for specific examples pertaining to these reasons that were given, and the example given to him in regard to the sloppiness of work was an example of many of these shortcomings. It was the gauge detailed at Silver Gate when the gauges were installed without proper securing and with dirty faces, dirty glasses.

The fact that he had been asked to check the boiler at Unit 1 prior to warm up and that he had reported to me that the boiler had been completely checked and found satisfactory. [149] The emphasis placed upon this start up was also told Newsom. Due to the fact it was on a Friday, and the work being done, a fire, the warm-up, could be put in the boiler and continued during the week end, when none of the instrument men would be there, it was necessary that we have all the details for a start up completed.

These were explained to Newsom as examples of his sloppy and inaccurate type of work.

Q. Was anything said at that time about the

(Testimony of Harold L. Warden.)

temperature recorders not working? A. Yes.

Q. Tell us what that was.

A. In connection with this check on Unit No. 1, prior to the start up, in addition to the airflow mechanism which has been mentioned, a number of the temperature recorders were found inoperative and it was necessary for us to check these out again and find out the reasons why they didn't work and put them in an operative manner.

These temperature recorders are very necessary to a start up.

Q. There was this meeting with the men present?

A. Yes.

Q. When did that happen?

A. Shortly after the meeting with Mr. Kalins, Newsom and myself. [150]

Q. State what occurred at that meeting and what was said by the various parties present.

A. When I arrived in that meeting, having gone to Silver Gate to bring Shroble up, Mr. Kalins again told the men and Newsom, as a group, it was his unpleasant duty to inform Newsom of his termination of employment, and stated the reasons which I have just related for his discharge or his termination.

Q. Then what did Newsom say?

A. Mr. Newsom brought up a number of things, I am not sure——

Mr. O'Brien: I will have to object, Mr. Examiner, the question was, "What did Mr. Newsom say."



(Testimony of Harold L. Warden.)

Mr. Luce: I don't believe he answered that question.

Trial Examiner Myers: What did Mr. Newsom say?

The Witness: To the best of my memory of that meeting, Mr. Newsom said that I had failed as a supervisor because of little personal actions on occasions that happened. One of these was that he accused me of being perturbed at him because he hid coffee away from me at Silver Gate; that we were working together one evening and he left the job and when he returned to the job I asked him where he had been. He said he had stopped out for a while and that I said I have smelled coffee on his breath and had at that time become very belligerent toward him.

Q. (By Mr. Luce): What was said by Mr. Kalins or you in [151] regard to the answer to Newsom?

A. I felt the charges——

Q. What did you say?

A. I said nothing.

Q. What did Mr. Kalins say?

A. He did not answer these specific charges that were made by Newsom.

Q. Was anything said by the other men present?

A. The other men listened quite intently to what was going on. One statement that I recall Mr. Fowler having made was that it appeared that Newsom's discharge was an unfortunate thing at this particular time because of the commitments that the

(Testimony of Harold L. Warden.)

men had made to one another in regard to backing each other in the union activities or negotiations.

Q. Was anything said in answer to that?

A. Nothing was said.

Q. Have you given us about all the substance of the conversations at that meeting, the second meeting, on January 31st?

A. There were considerable other accusations made, the text of which I do not recall because of the nature in which they were made. It didn't make too great an impression on me at that time.

Q. Were they accusations against you?

A. Yes.

Q. By Newsom? [152]

A. Yes. I have one other memory that I would like to make at this time.

During the discussion at this meeting Mr. Newsom said that he would take this thing—those were the words I believe he used—as far as he could in any court that was available for him, if for no other reason than the nuisance value.

Q. Now, at one of these meetings on January 31st, was there something said to Newsom about what he could do about terminating his employment as instrument technician?      A. Yes.

Q. What was said?

A. Mr. Kalins said to Newsom that he could apply to personnel for a transfer, that he could resign or could be discharged.

Q. What was his reply?

(Testimony of Harold L. Warden.)

A. That he didn't know what he wanted to do at this time and he would let us know.

Q. Did you ever receive that information? Did he ever let you know?

A. Yes, the following day, either the following day or the second day following, I contacted Newsom to see if he had made a decision and what it was. I said it was important to me to know if he had decided to resign or to be discharged so that we might put into operation the mechanics necessary in writing up his discharge; that if it were a resignation there [153] was the fact of making payment for his vacation which he had not received as yet. If it was a discharge, the accounting would necessarily be different from a resignation.

Q. What did he say?

A. He said, "I cannot resign."

Q. Was anything said at that conversation about his transfer?

A. There was no mention made of transfer.

Q. He said, "I cannot resign"?

A. He said, "I cannot resign".

Q. Did he ever say anything to you about a transfer?      A. No, not to me.

Q. At one time was Newsom given charge of an overhaul program?

A. On Unit No. 1 Newsom was given an overhaul schedule and told to proceed.

Q. About when was that?

A. It was near the middle of September, I don't have the exact date fixed in my mind as to when we started the Unit 1 overhaul.

(Testimony of Harold L. Warden.)

Q. That is of 1950? A. Yes.

Q. How did he conduct that overhaul program?

A. He conducted the work in such a manner that it created to me an impression that a job had not been well done.

At the mere completion of the Unit 1 overhaul, I found [154] it necessary to go in and supervise the completion of the overhaul detail so that a good overhaul might be assured.

Q. Was there an incident at one time in regard to Newsom signing the wrong name?

A. Yes.

Q. Will you give us the details of that?

A. The details, as best that I have them, were that in the early part of the month of February, 1951, I was checking the routine record which is maintained at Silver Gate. I came across the alarm check record of 1950 and there was a column on that record dated 1/23/51, under which was the name "Webb," and below the name a complete alarm check record. I took this record out to the instrument shop where Newsom was working and asked him what about it. He looked at it and took out an erasure and said, "I put that down just for laughs." I removed the paper from Newsom and brought it back into the office.

Trial Examiner Myers: This was in 1951?

The Witness: Yes.

Trial Examiner Myers: When was the date of the job?

The Witness: The alarm check of the job was

(Testimony of Harold L. Warden.)

dated 1/23/51 and that was placed on a 1950 record.

Trial Examiner Myers: On a 1950 record?

The Witness: Yes.

Trial Examiner Myers: What does that mean?

The Witness: This particular record is a large sheet with sufficient columns and spaces across it to record one year's record.

Trial Examiner Myers: I don't understand what you mean.

The Witness: On this record sheet at the top of each column there are sufficient spaces to show one year's record on a sheet of this nature.

Trial Examiner Myers: How often are the notations put in the record?

The Witness: It is our desire to have these made on a monthly basis, however, during overhaul periods of heavy work we have to necessarily give routine a secondary consideration and sometimes there is one or two months in running throughout the year that we do not have time to make the alarm checks.

Trial Examiner Myers: When do you think Newsom put Webb's name down, '50 or '51?

The Witness: I checked that record as of December 1950 and it wasn't there at that time, so it was sometime following the December date.

Trial Examiner Myers: And you discovered that in February?

The Witness: The very first part of February, at which time it is my job to check the record and make sure it is complete and up to date.

Trial Examiner Myers: You may proceed.

(Testimony of Harold L. Warden.)

Q. (By Mr. Luce): Was there any occasion when Newsom was [156] absent from his work without explanation? A. Yes.

Q. When was that?

A. It was during the month of October, 1949, if my memory is correct.

Q. What happened then?

A. It was following this discussion that I had with Newsom the first time in which I talked to him about his unsatisfactory nature of work. This occurred on a Thursday. The following Friday Mr. Newsom did not report to work and did not notify the company, to my knowledge. Saturday and Sunday were not worked, and Monday Mr. Newsom did not return to work. On my way home in the evening I stopped past Newsom's home and asked him what had been the trouble and what was wrong.

He said he had been sick and his wife had been sick and he had not come in. He did report for work the following Tuesday.

Trial Examiner Myers: Meaning the next day?

The Witness: Yes.

Q. (By Mr. Luce): At the time you were out there had he been in bed? A. No, sir.

Q. Did he give any appearance of illness?

Mr. O'Brien: I object to that.

Mr. Luce: I will withdraw it, but I think sometimes you [157] can tell very easily. Sometimes that is the way a doctor tells.

Q. (By Mr. Luce): Now, Mr. Warden, did you obtain the records that show the logs and other

(Testimony of Harold L. Warden.)

records which contain a diary of work done by Mr. Newsom?

A. I do not understand the question.

Q. You will have to tell me because I don't know what they are, but you have some records?

A. Yes, I have the records.

Q. Tell us what they are.

A. The records consist of routine records—  
Trial Examiner Myers: He means the name.

The Witness: Routine records.

Q. (By Mr. Luce): You prepared a set of records to put in evidence here?

A. Yes, I have.

Q. Tell us what they are.

A. The records I have prepared are tests on unit turbines No. 1, No. 2 and No. 3 at Silver Gate and combustion checks made on Boilers No. 3, No. 4 and No. 5.

Q. Have you made copies of these records?

A. Yes.

Q. Photostatic copies? A. Yes.

Q. Will you produce them, please?

A. Yes. [158]

Q. I will now call your attention to a set of photostatic records and first I will ask you whether or not these are photostats of original records obtained from the San Diego Gas & Electric Company.

A. Yes, they are.

Q. Did you have the photostats made?

A. Yes.

Q. Will you tell us what these records are, page

(Testimony of Harold L. Warden.)

by page? First, tell us, generally, what they are, and then we will ask you later to point out what is shown on these records in respect to Mr. Newsom's work.

A. Page 1 is entitled S.G. Routine Jan. 51, which is a routine outline that was prepared and shown in the border are dates from January 15th through January 31st.

The numbers on this record are routine outlines indicating specific jobs to be done on the day so designated, if conditions are such that that job can be done. It is necessary to understand, again, that some of the routines that are necessary in our plant likewise have to be fit in into overall plant operations.

Q. I think I will change my order and ask you to state what is indicated on that page in respect to the work of Mr. Newsom.

A. Mr. Newsom indicated by check marks that Item No. 4 on the 19th of January, and Item No. 4 on the 26th of January had been completed. However, on a calorimeter record which [159] works in conjunction with this, he failed to indicate on that record that the work had been completed, leaving a question as to whether the work had been done or had not been done.

Item No. 9 pertains to alarms and that work had been started on the 15th and completed on the 23rd. However, no indication had been made that the work had been started on the 15th on the routine outline.

Item No. 10, which also pertains to the calorime-



(Testimony of Harold L. Warden.)

ter, you will note by a check mark that it had been started and likewise it had not been noted on the calorimeter record.

Q. Leaving the question was to whether or not it had been completed? A. That is correct.

Q. Now, page 2.

A. Page 2 is a copy of the instructions from our instruction book, whereas the Item Nos. 1, 2, 3 and 4, will correspond to the numbers on the No. 1 page. In other words, No. 1 is indicated on the No. 1 page under the heading "Weekly", which would mean, "drain control air filters."

Nos. 2 and 3, as noted at the bottom, were to be done by the regular man, and not by the routine man.

Item No. 4 is the calorimeter on the weekly basis and is so indicated on the routine sheet No. 1 as Item No. 4 on the date specified.

Q. Go ahead. [160]

A. Page No. 3 is similar to page No. 2, only that designates by number the items to be done on a monthly basis as so indicated by Sheet No. 1.

Q. These are taken from your order book, is that right?

A. It is taken from the instruction book and order book at Silver Gate, yes.

Q. These were instructions to Mr. Newsom or to all the instrument men?

A. To all the men, but particularly to Mr. Newsom because this is routine work.

Q. Now, you may proceed.

(Testimony of Harold L. Warden.)

A. Page No. 4 is Sheet 1 of Sheet 2 which is a test, a routine combustion test on our Boiler No. 5 at Silver Gate. These sheets are made up in form and supplied to the men to make these tests on.

Q. Point out a specific instance there in respect to Newsom's work.

A. On Sheet No. 4 there is no specific instance, however, Sheet No. 4, being one of two sheets for the completed tests, was included in the exhibit. The items near the bottom of the page——

Q. What page?

A. Page No. 5, ——entitled "Burner number, Registered Notches, open." Then "Burner number, Position, inches." That is repeated for all eight burners. Opposite that should be [161] given the information as to the registered and burner position of the boiler during which time this combustion check is being made.

It will be noted that only two figures appear in the test column, figure numbers 16 and 21. It shows no settings or proposed settings or anything for the remainder of the eight burners.

Q. Whose duty was it to make these entries?

A. It was Mr. Newsom's duty.

Trial Examiner Myers: Wasn't Fowler supposed to do it?

The Witness: Fowler was working on this job without my knowledge and this job does not require two men.

Trial Examiner Myers: Did you speak to Fowler about it?

The Witness: I have had no occasion.

(Testimony of Harold L. Warden.)

Trial Examiner Myers: He is supposed to be working with Newsom?

The Witness: He was not supposed to be on the job.

Trial Examiner Myers: Yes, sir, but he was on the job. Have you discussed it with him since you discovered this?

By the way, when did you discover these sheets?

The Witness: Following the routine work which was completed by Newsom from the 15th of January to the 31st of January.

Trial Examiner Myers: When did you discover this omission on page 5? [162]

The Witness: It was near the first part of February, the exact date I don't recall.

Trial Examiner Myers: And since that date you haven't spoken to Fowler about it?

The Witness: No, sir, I have not.

Trial Examiner Myers: Fowler was on the job?

The Witness: Yes, he was there.

Trial Examiner Myers: By the way, while we are at it, when did you discover the omissions on page 1 of this proposed exhibit, that is, the S.G. Routine of January?

The Witness: Are you referring to Item No. 4?

Trial Examiner Myers: Yes, everything on that sheet that you complained about.

The Witness: At about the same time I discovered these incomplete tests and specific examples—

Trial Examiner Myers: You discovered this all after your decision to terminate, transfer or allow Newsom to resign?

(Testimony of Harold L. Warden.)

The Witness: That is correct. However, if I might be permitted to add, these had been passed to me very near the dates which they show and I had made a quick analysis of them without going into complete details. After having made many of the tests myself, it is not necessary to scrutinize them in exact detail to determine a good job is not being done.

Trial Examiner Myers: Why did you go over these in February, then? [163]

The Witness: Because it is my job to correct these records in more detail as time allows.

Trial Examiner Myers: All right, go ahead, Judge.

Q. (By Mr. Luce): Take your page 6.

A. This is a copy of the tests performed on Boilers No. 3 and No. 4, a routine combustion check. The item of question on this test might be noted by the encircled area. This test was made with excess air on the boiler of 12 to 13. The instructions state that the test should be made with 19 per cent air, that is, on Boiler No. 3.

Boiler No. 4 was made with excess air of 21 per cent. There is the possibility and accepted procedure that plus or minus 2 per cent above the prescribed is acceptable.

Under the No. 4 boiler and circled portion, it shows that the number of burners present was four, but no registered or burner position is shown for that boiler.

On Boiler No. 3 the number of burners is shown

(Testimony of Harold L. Warden.)

as four, and the registered position was shown as 13, 14, 12 and 12; the burner position shown is 17 inches and the inconsistency of this test is evidenced.

Q. You may go to page 7.

A. Page 7 consists of a copy of the test run on turbine No. 1. This is a routine test which requires the services of two men because there are readings made both on the turbine floor and on the basement floor which is separated by a considerable [164] distance. However, Mr. Newsom does not show his assistant's name on this check.

The encircled portion, the psi, meaning pounds per square inch, and not been changed to read the proper pressure or terminology which is inches mercury and not pounds per square inch.

The other encircled area in the right hand column consists of two sets of numbers.

Trial Examiner Myers: What is psi 7.6?

The Witness: That is the terminology meaning pounds per square inch. However, under the operating conditions that the machine is operating at this time, it is impossible for it to be pounds pressure. It is inches vacuum measured in inches mercury.

Trial Examiner Myers: This psi 7.6 can be translated into inches of mercury?

The Witness: No, unless it is so designated. The proper designation should have been 7.6 inches of mercury.

Trial Examiner Myers: You are reading this. What does 7.6 mean? Would any supervisor now

(Testimony of Harold L. Warden.)

working with you understand what 7.6 meant on this?

The Witness: If it had been properly entitled 7.6——

Trial Examiner Myers: This psi is typed in?

The Witness: Yes.

Trial Examiner Myers: You have encircled it?

The Witness: Yes.

Trial Examiner Myers: Did he put down the right numerals for the psi?

The Witness: He did not. It is not reading in psi, it is reading in inches of mercury.

Trial Examiner Myers: Would that confuse you if you read it?

The Witness: Yes, it indicates to me the inaccuracy of the tests because if he neglects to change the title of the reading——

Trial Examiner Myers: What should it be?

The Witness: I am questioning the title which should have been changed to read inches mercury.

Trial Examiner Myers: All right, now. Instead of putting in inches mercury, he just put down what should be inches mercury without scratching out psi and putting in im?

The Witness: The designation for inches is two small marks, like quotation marks, and the initial Hg stands for mercury.

It is our practice on these tests that the titling in the side here, as you might note, for all the other stages of pressure psi is totally correct, because it is pressure, but not at the 18th stage, the stage I am

(Testimony of Harold L. Warden.)

talking about. The title of psi was incorrect and should have been crossed [166] out and so designated in inches mercury.

Q. (By Mr. Luce): Mr. Warden, as a matter of fact, that isn't correct to say psi 7.6? A. No.

Trial Examiner Myers: What Judge Luce asked you was, is it correct to say psi 7.6?

The Witness: It would be correct to say psi 7.6 if the machine was operating in a positive pressure.

Trial Examiner Myers: All right, suppose he put inches mercury. What, if anything, should have been down there?

The Witness: The same figures.

Trial Examiner Myers: 7.6?

The Witness: Yes, but there is considerable difference between 7.6 pounds and 7.6 inches mercury.

Trial Examiner Myers: I will agree with you, but to you, looking at this at the time you went around and inspected it, would somebody of your ability, or greater ability, be confused by seeing this and think there was something wrong with the boiler?

The Witness: We are talking about a turbine.

Trial Examiner Myers: Whatever it is.

The Witness: The reason that was circled was to further indicate the sloppy or inaccurate manner in which the tests were run by Newsom.

Trial Examiner Myers: Did he run the test wrong or [167] did he not make the correct notation there?

(Testimony of Harold L. Warden.)

The Witness: He did not make the correct notation for that specific item.

Trial Examiner Myers: All right, if you saw that test run, would you be confused by the fact that he didn't change it? Didn't change the letters psi to inches mercury?

The Witness: Inasmuch as he neglected that, I would doubt then the reading of 7.6, because the entries of a man making such a test as this would very likely raise a question as to whether or not the 7.6 pounds would be the correct reading at this particular time.

Trial Examiner Myers: When did you make this discovery?

The Witness: It was in February.

Trial Examiner Myers: And all this material that you have in this proposed exhibit was made in February of this year?

The Witness: Yes.

Trial Examiner Myers: I just don't want to ask you the same questions each time.

You may proceed.

The Witness: The figures encircled in the last column about two-thirds of the way down on the gauge are 266.5 and 96. If you will follow across the page to the left you will find there is no designation of what these readings would be. They mean nothing to me or to any of the other men that have observed these tests. [168]

I do not understand what the reading is or what they pertain to. This is just another example of the



(Testimony of Harold L. Warden.)

inconsistence and inaccurate work of Mr. Newsom.

Q. (By Mr. Luce): Mr. Warden, on the top of the sheets so far is the word "Observer Newt"?

A. Yes.

Q. What is that?

A. That is the manner in which he signed his tests as an abbreviation for Newsom.

Q. Take your next page, please.

A. This is Page No. 8 pertaining to the turbine tests on Unit No. 2 Turbine.

Again, the failure to designate the proper title of the reading on the 18th stage pressure.

Q. On the lower part of the page, what are those?

A. On the left-hand side the printed form shows "C.W. temperatures No. 1 and No. 2," and the "C.W. discharge pressure No. 1 and No. 2." However, the pressure on pumps No. 3 and No. 4 he did not properly title. Again, indicating the inaccurate manner in which he established his proper title.

In the right-hand column of this Page 8 there are some figures which are not completed readings. It is quite impossible, under the operating conditions that the turbine is operating to have a low pressure temperature of 279 degrees. Undoubtedly, in averaging out the readings and preparing them for a final, [169] he omitted the low pressure heater reading and transferred the Deaerator water and vapor temperatures which had not been carried clear across, raised one line, and placed in the average or final column, the figure of 279.

(Testimony of Harold L. Warden.)

Therefore, as far as I can see, there is no reading for the low pressure heater temperature which is a very important reading in calculating these tests. Likewise, to a person who wanted to pick up any specific readings from this, in the event he should choose one below where this omission had been made, if he moved right straight across the page, the one item which reads, "H.P. heater drain" would have a blank, making the test of little value.

Also, across from the reading, "Condensate flow" there is nothing as I have indicated by a small circle enclosing a question mark.

Trial Examiner Myers. And this was discovered sometime in February?

The Witness: Yes.

Q. (By Mr. Luce): The date of the test is shown at the top of the sheet, is it not?

A. Yes, it is shown as 1-16-51.

Q. You may go to Page 9.

A. Page 9 is a copy of the turbine tests run on No. 3 turbine and dated 1-16-51, Observer Newsom.

Again, omitting the proper titling on the C.W. temperatures [170] and the C.W. discharges which should be No. 5 and No. 6.

There is a complete omission of the discharge—the C.W. discharge pressure as indicated by the circle in the last column.

Q. And what about Page 10?

A. Page 10 is a photostat of a chart that was run at the time this test was taken on Unit No. 3. It will be noted, referring to Page 9, that the test

(Testimony of Harold L. Warden.)

was presumed to be run at 1:15, 1:25, 1:35 and 1:45. This time can be readily established on the turbine flow meter chart as indicated by the timing in the border. It will be noted that I made two marks on this chart indicating this period of time in which this test was run.

Reading this chart, it is graduated in 10's from 0 to 650. The width of the line is such that it covers approximately two divisions or 20. Where a fluctuating reading is evident, it is our practice to average the maximum and minimum readings. Therefore, a minimum reading of 510, and a maximum reading of 530, would give an average reading of 520. However, the reading as shown on Page 9 and so circled is 515, which is 5000 pounds of steam per hour error.

Q. What about Page 11?

Trial Examiner Myers: What figures average 520?

The Witness: On the chart as indicated by Page No. 10, which is a copy of the chart operation on the machine. It will [171] be noted in the left-hand lower side of this page that there is a time designated as noon, 1:00 and 2:00. The test was run in that period of time. The rate of flow was the reading in question and it is designated by the title on the chart very near to where we were reading. This chart is divided in divisions of 10 ranging from zero to 650. The heavy line indicated on the chart is the flow as recorded by the flow meter passing through the turbine during the time the test was made. This

(Testimony of Harold L. Warden.)

flow was an average of a reading of 510 and 531, the average of which, when considering each division is 10, would give you a reading of 520.

Trial Examiner Myers: After the 1:00 o'clock there, doesn't that drop below the 530 a little bit?

The Witness: It appears that the test was run from 1:15 to 1:45.

Trial Examiner Myers: Don't you see it going over there? In fact, it is almost down to 500.

The Witness: I don't understand you.

Trial Examiner Myers: Isn't it almost down there, doesn't it slide off? This is the line you mean? That is 500?

The Witness: Yes.

Trial Examiner Myers: Doesn't this line slope down?

The Witness: Very, very slightly, almost no more than it exceeds above or comes up to here.

Trial Examiner Myers: That is 2:00 o'clock.

The Witness: All right, let's take from here to here. During that period of time, I believe the line touches the 530 and goes, I believe, very, very slightly, if any, below the 10.

Trial Examiner Myers: It goes some and might have been his reason to say it was 515 instead of 520.

I don't know what his explanation of that would be, but go ahead.

Q. (By Mr. Luce): Well, now take up page 11.

A. Page 11 is a photostat of the 1950 alarm record. That is one page of a two-page record.

(Testimony of Harold L. Warden.)

Page 12 is the——

Trial Examiner Myers: Was anything wrong with that?

The Witness: No, nothing wrong with that.

Trial Examiner Myers: Did you put it in here for some reason?

The Witness: That is used to be able to show a completed record. The same as on the combustion check record on No. 5, there were two pages there.

Trial Examiner Myers: What did you say pages 11 and 12 were?

The Witness: It is the alarm setting record. Page 11 is Unit 1, alarm record setting for the year 1950.

Trial Examiner Myers: This is supposed to cover Mr. Newsom's work? [173]

The Witness: Yes. Page 12 is the record of the alarm setting on Unit No. 2, 1950. These two pages are compiled to show the alarm records for both Unit No. 1 and Unit No. 2 for 1950.

On the last column on page 12 you will see an entry dated 1-23-51; a '51 record being applied to a 1950 completed record.

Below that in very fine detail you will see the letters W-e-b-b.

Trial Examiner Myers: Where is that?

The Witness: At the top of the column.

Trial Examiner Myers: That is where he put Webb's name?

The Witness: Yes.

Trial Examiner Myers: I see what you mean, go ahead.

(Testimony of Harold L. Warden.)

The Witness: A 1951 record was applied to a 1950 record and these entries have been questioned.

Q. (By Mr. Luce): Now that represents the incident that you mentioned to show to Newsom and he attempted to erase, is that correct.

A. That is correct.

Q. Now, go to page 13.

A. Page 13 is a monthly recording of the calorimeter calibrations at Station Silver Gate. It is so entitled for the month of January, 1951.

The instructions are that when an item is checked it is [174] to be marked as indicated in the lower right-hand side "Use these marks to check above." "O" representing boiler room operator, "V" indicating instrument engineer, "T," instrument technician, and "X," others.

It will be noted Newsom marked on page No. 1, Item No. 4, on the corresponding dates that he had checked this on a weekly basis. However, as shown by the circle drawn on this there was no notation in any manner made of that work being done, which consisted of the mechanical balance and the ordinary weekly maintenance which is described in the lower left-hand corner.

Also, Item No. 12 on Sheet 1 was indicated as having been completed and yet no notation was made on this record as indicated by the circle in the column of the 29th.

Trial Examiner Myers: When you say sheet No. 4, what do you mean?

(Testimony of Harold L. Warden.)

The Witness: Page No. 4.

Trial Examiner Myers: You undoubtedly wrote this notation, "This work shown as done on work sheet, see No. 4?"

The Witness: Yes, that is my writing.

No. 4, the work sheet, as we call it, is the No. 1 page of this one here.

Mr. Luce: We have been referring to it as Page 1.

Trial Examiner Myers: Page 1 of this proposed exhibit?

The Witness: Yes. [175]

Mr. Luce: Please refer to these as pages because you have Sheet 1 and Sheet 2 and it is confusing.

The Witness: I have been referring to the page numbers, but the question was brought up in regard to the notation here "Work sheet". This Page No. 1 is commonly called among us a work sheet.

Trial Examiner Myers: All right, go ahead.

What is the meaning of the notation "See No. 10"?

The Witness: No. 10 refers to Item No. 10 on Page No. 1. In other words, Item No. 10 on Page No. 1 was marked as indicated that it had been done, and still no indication of this work having been done on Page 13, the calorimeter record.

This leaves a doubt as to whether the work was done or was not done, whether this was marked off on Page No. 1 and the work was not done, whether the work was done and an omission made from Page 13, or what is the status of the work.

(Testimony of Harold L. Warden.)

It is an indication of the inaccuracies and incomplete work that was produced by Mr. Newsom.

Trial Examiner Myers: This was discovered in February?

The Witness: Yes, sometime in February.

Q. (By Mr. Luce): Now, refer to Page 14.

A. Page 14 is an alarm setting record for 1951, showing entries made date 1-15-51. This ties in with the points on Page No. 1, or question on Page No. 1, Item No. 8 where I had noted this item was started on 1-15-51 and not so indicated on the work sheet.

It is necessary when we make up the work sheet for the next month that we so place our work so that it is consistent on as near a basis as possible. Therefore, if I had not noted this and had set up the alarm checks for the 23rd of February, needless to say the alarms on Unit No. 1 would have gone approximately one week longer without being checked on that unit.

Q. What is Page 15?

A. Page 15 is an alarm record for 1951 on Unit No. 2. There were some omissions that might be noted in the complete check of the alarm, however, no notation had been made on the work sheet that the alarms had not been completely checked.

Q. Now, your last page.

A. That is the page I have been referring to.

Q. Mr. Warden, the proposed exhibit from which you have been testifying, is that a checked



(Testimony of Harold L. Warden.)

photostatic copy made from records of the company? A. Yes, I believe so. [177]

Mr. Luce: We offer this exhibit in evidence.

Trial Examiner Myers: Any objections?

Mr. O'Brien: I have two objections.

\* \* \* \* \*

Trial Examiner Myers: I will overrule the objection and receive the paper in evidence. Will the reporter please mark this Respondent's Exhibit No. 2.

(Whereupon the document above referred to was marked Respondent's Exhibit No. 2 and was received in evidence.)

[Printer's Note: Photostatic copies of Respondent's Exhibit No. 2 are reproduced at pages 441 to 455 of this this printed record.]

Trial Examiner Myers: We will take a short recess.

(Short recess.)

Trial Examiner Myers: Mr. Warden, will you resume the [178] witness stand.

Judge Luce, you may proceed.

Q. (By Mr. Luce): Let me ask you again, just briefly, about these prior meetings with Mr. Newsum at which time you discussed with him the quality of his work.

The first one, I believe you said, was October 27, 1949.

A. I believe that is correct.

(Testimony of Harold L. Warden.)

Q. At that time you pointed out to him the reasons why you said his work was not satisfactory?

A. Yes, I did.

Q. You have already testified as to these reasons?      A. Yes.

Q. Then, again, you discussed with him the quality of his work on May 16, 1950?      A. Yes.

Q. At that time Mr. Hardway was present?

A. Yes.

Q. Did you again point out the reasons why his work was not satisfactory?      A. Yes.

Q. What was his reply?

A. That he liked instrument work.

Q. Now then, on September 18, 1950, you had a conversation with him in the presence of Mr. Kalins, did you not?      A. That is correct. [179]

Q. Now, at that time did Mr. Kalins tell Mr. Newsom about his work? Did he criticize Mr. Newsom's work?      A. Yes.

Q. Did he go into detail?

A. To some extent, yes.

Q. What did Mr. Newsom say at that time?

A. I don't recall his concluding statements.

Q. That is the conversation in which Mr. Kalins told him if his work didn't improve he would be terminated?

Mr. O'Brien: I am going to have to object. I am not sure that is the testimony.

Mr. Luce: I will withdraw the question.

Q. (By Mr. Luce): Will you tell us what occurred in the meeting with Mr. Newsom on or about September 18, 1950?

(Testimony of Harold L. Warden.)

A. Mr. Kalins, Newsom and myself met in my office at Silver Gate, at which time Mr. Kalins told Newsom that his work had not been satisfactory, and he cited some instances as examples of unsatisfactory work.

During the course of the conversation, Mr. Kalins stated that if his work did not improve satisfactorily and come up to a set standard that he no longer would be allowed to remain in the instrument crew.

Trial Examiner Myers: When was this meeting?

The Witness: September, 1950.

Mr. Newsom asked, I believe two times, just what that meant. [180] My answer to Newsom was that he would be through, out. That he could no longer work in the instrument department.

Q. Did you have any further discussion with him at that time after those remarks were made?

A. I believe there was continued discussion of the matter, which I do not remember at this time.

Trial Examiner Myers: Am I right in assuming that you are the head of the instrument department?

The Witness: That is correct.

Trial Examiner Myers: And was during all the time we are discussing?

The Witness: Yes.

Q. (By Mr. Luce): Mr. Warden, after this discussion with Mr. Newsom on September 18, 1950, what was the nature of your work from that time on until about the first of January?

(Testimony of Harold L. Warden.)

A. I was required to spend practically all my time on extensive tests on the No. 5 Boiler which had been installed in August prior thereto.

These tests were run in connection with the boiler manufacturer, the instrument manufacturer and burner manufacturer, together with the engineer from the company's engineering firm that designed and built this unit. The nature of the tests was such that it was to the company's advantage to have the persons most familiar with instrumentation on the scene during these tests so that a more full [181] and complete test might be obtained.

Q. Were you able during that period of time to pay attention to the activities of Mr. Newsom?

A. Not to any great extent.

\* \* \* \* \*

#### Cross Examination

Q. (By Mr. O'Brien): Mr. Warden, how long have you held your present position?

A. As instrument engineer?

Q. Yes.

A. Since March, 1947.

Q. And prior to that your position was what?

A. Instrument technician A.

Q. You held that position for approximately what length of time?

A. For a period of about eight months. And prior to that I was instrument technician, senior, which position I held from June 1944.

Q. That means that you have been working, at least at Station B, since June 1944?

(Testimony of Harold L. Warden.)

A. That is correct.

Q. When was Silver Gate put in operation?

A. 1943. [182]

Q. Did you work at both stations?

A. I did.

\* \* \* \* \*

Q. That is, there has been no serious injury since 1944?

A. I know of none or cannot remember.

Q. You would know of one if there had been any?           A. Probably.

Q. Isn't that due, in some part, to the efficiency of the instrument technicians?

\* \* \* \* \*

The Witness: I believe that might have played a part, however, I believe the reason of the excellent safety record throughout our time is brought about by the constant vigilance [183] of those working around this type of equipment.

Q. (By Mr. O'Brien): That includes the instrument technicians, too?

A. That includes the instrument technicians.

Q. Since Mr. Newsom came into the department, has there been any serious injury to any of the equipment?           A. Yes.

Q. Would you name one, sir?

A. The burn up of Unit No. 1 generator.

Q. That was the No. 1 generator which burned up in September of 1950?           A. That is correct.

Q. That is the only serious injury to equipment?

A. That is right. We have had difficulties result-

(Testimony of Harold L. Warden.)

ing in some damages to Boiler No. 5 which was brought about by the original installation fallacies.

Q. That is, the injury to Boiler No. 5 was due to persons who were not employees of the San Diego Gas & Electric Company, is that right?

A. Yes.

Q. That is, it was not properly installed when it was given over to your care?

A. That is correct.

Q. Then, the only serious injury to the equipment has been this burn up of—is it a generator?

A. It was a generator field coil that burned out.

Q. Was that due to human negligence?

A. I don't have a full report on it.

Q. You don't know what caused it?

A. I have not had the opportunity to read the report of what caused that burn up.

\* \* \* \*

Q. Do you yourself have an opinion?

A. Yes.

Q. What is it?

A. Failure of insulation between the windings.

Q. In other words, you think it was a manufacturing defect?

A. It was a materials defect. [185]

\* \* \* \* \*

Q. By the way, do you have an instrument technician working under you by the name of Bob Cole?

A. Bob Cole worked as an instrument technician, however, I believe his rate while working

(Testimony of Harold L. Warden.)

for us was junior engineer. While working for us it was for training purposes.

Q. Is it right that he has a more responsible position with the company now? A. Yes.

Q. Do you remember an occasion when Mr. Cole opened the valve permitting steam to a line on which Mr. Armstrong was working?

A. I recall the occasion, however, I do not believe Mr. Cole was to blame for that, because he had asked for a holdout which had not been properly executed for him.

Q. Mr. Cole had not checked to make sure that nobody was working on the line before he turned the steam into it?

A. He had no reason to. [188]

Q. That could have resulted in serious injury to Mr. Armstrong?

A. Yes, due to the fact of the holdout not being properly executed. However, no serious injury occurred and no damage to the equipment.

Q. With all these derelictions of Mr. Newsom's, no injury occurred, did there?

A. Due to his responsibility?

Q. Due to the actions of Mr. Newsom there was no injury to any persons? A. No, sir.

Q. No damage to any equipment by Mr. Newsom?

A. No damage of major proportion to any equipment.

Q. Any minor damage?

A. On unit No. 1, during the overhaul on which

(Testimony of Harold L. Warden.)

Mr. Newsom had been assigned the responsibility, there were some pyrotron motors that were changed because they were thought to be inoperative. In so doing the design of the new motor required redrilling the case, making the original motors of no value.

I don't know whether you could consider that damage to equipment or not.

Q. These motors were damaged, weren't they?

A. They were.

Q. They were made of no value to you? [189]

A. That is right.

Q. They were made of no value to you by Mr. Shroble and Mr. Fowler?

A. I don't know who was exactly responsible for that. The man who had been assigned the responsibility of the overhaul.

Q. Did you inquire who was responsible?

A. Yes.

Q. Of whom did you inquire?

A. Of Mr. Newsom.

Q. What did Mr. Newsom tell you?

A. He told me that Fowler had been working on the pyrotrons.

Q. Did you make inquiry of Mr. Shroble?

A. Yes.

Q. What did Mr. Shroble say?

A. He said he thought the pyrotron was inoperative and he had checked to the best of his ability with Newsom on these and they decided to change the motor.



(Testimony of Harold L. Warden.)

Q. Who actually turned the juice into the motors and burned them out?

A. They were not burned out, they were changed because they were thought to be inoperative.

Q. Were they inoperative?

A. They have since been tested and found in an operative condition.

Trial Examiner Myers: Inoperative? [190]

The Witness: No.

Q. (By Mr. O'Brien): Now, you are saying there wasn't any damage to the motors?

A. No, because the motor can not be used because of the change of the new motor which replaced it. I qualified my statement that I didn't know whether it could be considered damage to equipment, sir.

Q. Do you recall of any incident again involving Mr. Cole with reference to No. 2 turbine steam flow meter when he was blowing down the meter?

A. That strikes a point in my memory, but I don't recall the incident or detail.

Q. The object of blowing down the meter is to keep the steam lines clean to the meter itself, is that right? A. Yes.

Q. Before blowing down the meter two valves are closed to bypass the steam from the meter itself, is that right? A. No, sir.

Q. What valves are opened and what valves are closed when the meter is blown out?

A. During the blowing down period the valves on the lines which we term K-1 and K-2 are closed,

(Testimony of Harold L. Warden.)

and the equalizing valve on the meter is opened.

After the K-1 and K-2 valves are closed, then blowdown valves are opened and the lines blown either to atmosphere or [191] to the blowdown system.

Q. What would happen in the event the K-1 and K-2 valves were left open and the blowdown valve was open?

A. It would cause the meter to go to its maximum stop.

Q. Its maximum stop being—

A. The stop manufactured in the meter so it can not over travel.

Q. It is kind of a lead seal on there?

A. No, sir.

Q. What is it?

A. It is a design of the instrument in the upper cover so that when the bell comes up to its maximum limit, it covers the K-2 port.

Q. That is a mercury meter?

A. That is correct.

Q. Approximately how much mercury is contained in the meter?

A. I don't have that figure available.

Q. About 50 pounds?

A. I would say that much, possibly more.

Q. What steam pressure does the meter register?  
A. 850 pounds.

Q. Is it possible that the safety factor on that meter might blow and the meter be driven into the

(Testimony of Harold L. Warden.)

steam line if the blowdown valves were open when K-1 and K-2 valves were still open? [192]

A. It is extremely unlikely that that could happen.

Q. It would be negligence, however, to leave K-1 and K-2 open in blowing out the meter?

A. It is not good practice.

Q. Now, do you recall that Mr. Cole did that on one occasion?

A. Yes, I believe that is correct. [193]

\* \* \* \* \*

Q. By the way, how many gauges do you have at both stations? They run into the thousands, don't they?

A. Yes, I believe it would probably be 750 to possibly 1000 gauges.

Q. Some of these require very little attention?

A. Some of them are of varied importance, yes.

Q. Quite recently did you have a fuel oil spill at Silver Gate? A. Yes, we did.

Q. When was that?

A. During Unit 2 overhaul on Boiler No. 3 of this year.

Q. It was after Mr. Newsom's discharge?

A. Yes, it was.

Q. Was that due to human negligence?

A. That was due to another time in which a proper holdout [194] had not been executed.

Q. Was one of the instrument technicians involved in that?

A. There were two instrument technicians involved in that.

(Testimony of Harold L. Warden.)

Q. Was anyone discharged?

A. No, they were not.

Q. Approximately how much oil escaped?

A. The condition in which that oil splattered I wouldn't be able to make an estimate, sir.

Q. That is, fuel oil was flowing at high pressure all over the place?

A. Over an area below the operating floor, directly under Boiler No. 3.

Q. Creating a serious fire hazard?

A. Say a questionable fire hazard because the unit was not on the line and we had not been using it throughout the plant because gas was available and the temperature of the oil was quite low.

Q. With reference to this boiler, on which Mr. Newsom missed a control that you caught, were there any other instrument technicians around at the time when you called it to his attention?

A. I believe there were. I don't consider his check on the boiler very thorough because of the airflow mechanism being locked in place and the pyrotron and temperature recorders were not all operating. [195]

Q. Would a fireman be able to start up the boiler with the mechanism locked the way that was?

A. He would have been able to start it up, but he would not have been able to continue the entire warmup period with the airflow meter out of service, and particularly, the pyrotron.

Q. It wouldn't be possible for the fireman to do any serious damage?

(Testimony of Harold L. Warden.)

A. He would not, because he would not have an indication as to what his boiler was doing and he would have stopped it at that point.

Q. Aren't there occasions when you have caught omissions by other instrument technicians?

A. Yes.

Q. But Mr. Newsom was the only one who was discharged, as far as you know?

A. If I may be permitted to make this statement—

Q. Go right ahead.

A. I don't feel we can compare the omissions by Shroble and Fowler with Newsom's because of the fact that Shroble and Fowler still lack some two or two and one-half years' experience as compared to Mr. Newsom.

Q. What you are saying is that you are holding Mr. Newsom to a much higher standard of work than the other instrument technicians?

A. Due to his rating, yes. [196]

Q. When was it that you told Mr. Newsom that he would be in charge of the overhaul of Unit No. 1?

A. It was at the very beginning of Unit No. 1 overhaul.

Q. It was during the month of September?

A. I don't remember the exact date.

Q. You have already fixed the date of the conference with Mr. Kalins and Mr. Newsom as of September 18th?

A. Yes.

Q. With reference to September 18th, when did

(Testimony of Harold L. Warden.)

you tell Mr. Newsom he would be in charge of the overhaul?

A. It was before September 18th.

Q. How long before?

A. If my memory is correct, I believe we started the Unit 1 overhaul on September 6th or thereabouts.

Q. How did you fix that date?

A. Because we started the overhaul very shortly after the burnup or after the burnup time. That day could very definitely be established, however.

Q. Is there a daily log maintained of the work at each station?      A. Yes.

Q. The daily log would show on which date he started that?

A. I am sure it would indicate the beginning of the overhaul at Unit 1, yes.

Q. During recess would it be possible for you to call your [197] office and examine that log then tell us this afternoon when Mr. Newsom started the overhaul?

A. Yes, I can secure that information for you.

Q. By the way, are the log sheets kept in a bound volume so it would be convenient for all of us to examine them?

A. The log sheets are made up in a weekly manner on looseleaf binder material and submitted to my department head, Mr. Kalins. From there they go to the superintendent who checks them and then they are filed in a looseleaf folder. However, I keep

(Testimony of Harold L. Warden.)

a bound diary, so to speak, of the things that go into the weekly log that I present to Mr. Kalins.

Q. The instrument technicians give you the data which you yourself enter onto the log?

A. Yes.

Q. So the log is your record of the work that your subordinates have done?

A. That is correct.

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Q. After you make up your log, what do you do with your original notes that are handed to you?

A. In some instances they are filed and in other instances—the manner in which they are handed to me, they are on random [198] slips of paper and usually they are destroyed.

Q. That is, a man may be working with a wrench in one hand and a pencil in the other?

A. It isn't quite that bad, but out in the plant when they are working it is difficult for them to have an 8½ by 11 sheet of paper with them. Therefore, they just jot down their activities on most any kind of paper that is available to them. That is an exception, they usually present it in a decent form.

Q. That's right, they take their original notes and put it on a clean sheet so that it will be easier for you?

A. That is right.

Q. Ordinarily, if you see an omission or something that you don't understand on these rough sheets, you ask the man about it before you write it up in your log?

A. If there is anything that attracts my at-

(Testimony of Harold L. Warden.)

tention at that time. As far as any error or question as to some specific item mentioned, I would perhaps contact the man if I didn't understand his log.

Q. You make up a daily log and turn it in every week?

A. On a weekly basis, yes.

Q. Mr. Newsom was engaged in the overhaul of this No. 1 at Silver Gate, you say, practically without supervision?

A. Very nearly so, yes. I did have the opportunity to check with him on occasions, usually in the mornings, as to the progress of the work he had done and if there were any [199] particular questions involved on the overhaul schedule.

Q. From about September 6th to, I believe you said it was about January 1st—right after New Year's Day that the work was completed?

A. The work was completed on Unit 1?

Q. Yes. A. Yes, that is correct.

Q. That was when you told him he would be in charge of routine at both stations?

A. That is correct, following that.

Q. In your conference with Mr. Newsom on September 18th, did you mention to him anything about the way he was handling the overhaul on Unit 1?

A. Unit 1 overhaul had not progressed far enough to be able to make much of an analysis at that time.

Q. So there was no criticism about how he was handling the overhaul?



(Testimony of Harold L. Warden.)

A. At that time no observations had been made warranting any criticism.

Q. The next time you talked to him about his work was in January, 1951?

A. The next occasion that we spoke of Mr. Newsom in regard to the work was at the meeting where Mr. Kalins and myself and Newsom were there at which time he was told of his discharge.

Q. So during all the time that he was handling this overhaul [200] at Silver Gate, practically without supervision, you didn't convey any complaint to him?

A. Except near the end of Unit 1 overhaul at which time the airflow incident and the pyrotron temperature recorders were brought open at which time I questioned his type of work there.

Q. That was a single incident, these two items?

A. They were both found the same day, but at separate times.

Q. You think there were other instrument technicians around at this same time?

A. They were all working in and around the instrument board, some of them, I don't recall who was there.

Q. How long did it take to correct the difficulty?

A. I didn't correct it, I pointed out the trouble. I forget which instrument man went in and freed the airflow. I do not recall, but there were two or three of us working on the pyrotron and corrected that difficulty.

Q. Mr. Warden, you have used the words "defi-

(Testimony of Harold L. Warden.)

nite measured output'' in your testimony. I would like to know what you mean by these words?

A. What I am saying when I make the remark definite measured output is that Mr. Newsom's abilities indicated at times that he was capable of doing a far greater amount of work and a better nature of work than he was doing. It appeared to me a definite hesitation or a measuring of his output in mind with the required specific requirements of that particular job. [201] It was like he was trying to balance himself in that he did nothing more than what his specific job was required of him. That would be my analogy or reason for using the words of definite measured output.

Q. What you are saying is that you weren't satisfied with the work and you couldn't put your finger on what it was?

A. That is only one of the failings that he was notified of at the time of his discharge.

Q. That is the one item I am interested in now, the definite measured output. Do you have a production quota for instrument technicians?

A. That isn't very practical in our department.

Q. I couldn't understand how it would be.

How did you determine what his output should be?

A. It might be explained in his attitude towards his work. He did not show his desires to do anything except which was specifically instructed of him. The other men in the department, and I think not only in my department, but throughout

(Testimony of Harold L. Warden.)

the entire plant, are given certain leeways. We are not regimented down to the point that we can only move when we are told. That might be done in other companies, but if we see a gauge that is loose or improperly mounted, we can go ahead and straighten it up and we don't wait until we are specifically instructed to do this or that or something of that nature when it is obvious of the condition existing.

Also, some of the men who are working for me will notice other occasions of work out in the plant and they have been very fine in coming to me and saying that such and such appears to be needing attention. They call my attention to it and we proceed from there as a co-operating group, working in harmony.

Q. Isn't it a fact that Mr. Newsom has devised a more efficient method of doing certain routine jobs around the place?

A. I don't recall of any.

Q. You don't recall of any improvement that he suggested to do which you have adopted?

A. Undoubtedly, in his two and one-half years' time he has made considered suggestions. As I said, there were periods of time in which he did do very satisfactory work.

Q. Other phrases you used were "utter disrespect." What do you mean by that?

A. The manner in which he spoke to Mr. Kalins and I during our discussion with him in regard to his work habits of the September 18th meeting and, again, at the time of his discharge.

(Testimony of Harold L. Warden.)

Q. On both of these occasions you were reprimanding Mr. Newsom?

A. One he was being reprimanded, the other he was discharged.

Q. Would the better attitude have been, "Yes, sir, I will try to do better"?

A. No, that would not have been the proper attitude.

Q. He defended himself, didn't he? [203]

A. He did not accept criticism as it was given to him for his improvement and betterment.

Q. Well, this "utter disrespect," means just a feeling that you got rather than anything else. It was not anything he said, specifically, or just a feeling that you had?

A. It was the manner in which he spoke to us and the manner in which he said his demands and offered his questions.

Q. With reference to the supervisors' meeting, when the unanimous decision was made to discharge Mr. Newsom, I think you said you proposed at that time a training program?

A. That is correct.

Q. Was that the first time you proposed such a training program?

A. To the supervision in an official manner. There had been some conversation between the Station Chiefs, Mr. Kalins and myself in formulating a proposal, but at that particular meeting we put the proposal up to be decided on.

Q. These meetings were held weekly?

(Testimony of Harold L. Warden.)

A. I believe that is the attempt.

Q. Is there any formal agenda?

A. I don't know.

Q. Any minutes?

A. I don't know, I don't believe there is.

Trial Examiner Myers: You attend these meetings, do you? [204]

The Witness: I only attend these meetings occasionally. The primary attendants of these meetings are Mr. Hathaway, Mr. Zitlaw and Mr. Campbell. I don't know how often Mr. Kalins attends those meetings. I attend the meetings which pertain to or have some question in regard to instrumentation.

Trial Examiner Myers: How did you know there was going to be something discussed in regard to your division? Were you so advised or did you bring up the question?

The Witness: It can be done either way.

Trial Examiner Myers: How is it done?

The Witness: It is done in this manner, that either Hathaway, Campbell or Zitlaw will ask us to attend a meeting at which they might discuss an operation going into process, or might be scheduled for the next day or the following week, in which instrumentation will be discussed regarding operating problems or the like.

In the event I have something to present to these men in regard to instrumentation, I can make my wants known that I would like to come to the meeting and present such and such information.

(Testimony of Harold L. Warden.)

Q. (By Mr. O'Brien): You are not automatically invited to these meetings?

A. That is correct.

Q. If Mr. Hathaway wants you there he says please be there? A. That is correct.

Q. Suppose you want to take something up at a supervisors' meeting. You will tell Mr. Kalins, it goes through military channels and eventually word comes back to you that you are invited?

A. That is correct.

Q. How did you get invited to this meeting on January 30th, 1951?

A. Before this particular meeting I had talked to Mr. Kalins in regard to the proposed instrument training program. We went to the meeting together to present the proposed training program. I went as Mr. Kalins' assistant, because he is the head of the entire department and was the one to make the presentation of the proposal.

Q. When did you first discuss the instrument training program with Mr. Kalins?

A. Probably intermittently, when an occasional opportunity was involved, for a period of three or four months. Also, there had been discussions in regard to instrument training even as far back as when Mr. Hardway was efficiency engineer.

Q. It was an idea that was always in the back of your mind?

A. Yes, that at my first convenience I wanted to outline the program and put it into operation.

Q. Did you have your ideas formulated in writing by the time of the January meeting?

(Testimony of Harold L. Warden.)

A. No, they were in the form of notes, but it wasn't complete. There were no papers presented.

Q. When did you prepare the notes?

A. That was an accumulation of notes over some period of time.

Q. Months or possibly years?

A. I would say months.

Q. Why did you decide to take it up at this particular meeting?

A. Because we had completed the overhaul schedule for 1950, even though the overhaul schedule did extend into the very early part of '51, in January, we completed that overhaul schedule and we had approximately the months of February, March and April in which we could conduct this training program without being interfered with by overhaul programs.

However, I believe our overhaul program did start in March and not in April.

Q. And your proposal for the training program, as you presented it to the supervisors, did it then include the proposal that the instrument technicians receive their training after their regular working hours with overtime pay?

A. It was decided at this meeting that the training program would be attempted on the schedule of twice a week, one hour—between the hours of 3:00 and 5:00 in the afternoon. Our normal quitting time is 4:00 o'clock, therefore, it would be one hour on regular time and one hour at time and one-half for each meeting.

(Testimony of Harold L. Warden.)

Q. Was one of the considerations for that the fact that it would be a method of giving the instrument technicians a little more compensation?

A. No, sir.

Q. It had that effect, however?

A. It did give them more money, yes, but the reason——

Q. When was the program put into effect?

A. Shortly after the 1st of February.

Q. This supervisors' meeting was on what date, sir?

A. January 30th.

Q. Who first brought Mr. Newsom's name into the discussion?

A. I did.

Q. What did you say?

A. I was answering a question presented by Mr. Hathaway to me. The question was: "How are the men doing in the department or in the instrument crew?" My reply to Mr. Hathaway was, "All the men are doing very well, considering their training and experience, except Newsom."

Q. What was the next remark made?

I know it is very difficult at this late time to remember, but I know you have reviewed this with the Judge and you have been over it on the stand before, but I want it as well as you can possibly give it to us in the sequence of who spoke first and second so we can have it chronologically. Then we can see what it sounded like.

A. To the best of my ability I will do that.

Mr. Hathaway said, in effect, these may not be



(Testimony of Harold L. Warden.)

his exact words, but the statement was, "What should we do about this man?"

Who spoke next in turn, I do not know, but I do remember—

Trial Examiner Myers: Who was the conversation between? You and Mr. Hathaway?

The Witness: Mr. Hathaway directed his question as to what to do with this man to all persons attending the meeting.

Trial Examiner Myers: You brought up the question and Mr. Hathaway threw it open to the meeting.

The Witness: That is correct.

Mr. Campbell, Mr. Zitlaw, Mr. Kalins and myself, with Mr. Hathaway entered into discussing the work habits.

Q. (By Mr. O'Brien): You see, that is what has been giving me trouble before. Just tell us the conversation.

A. I just don't remember the exact sequence of who spoke and what it was at that particular time. Mr. Campbell was asked—perhaps this might be the solution to your question: When this unanimous decision was made, Mr. Campbell, Mr. Zitlaw, Mr. Kalins and myself were asked, individually, by Mr. Hathaway, one at a time, and I believe in that sequence, what we would recommend doing in regard to Newsom.

In each instance, the men answered that termination of employment seemed to be the only solution.

Trial Examiner Myers: Supposing Mr. Newsom

(Testimony of Harold L. Warden.)

was transferred to another department. What department would he be eligible to transfer into?

The Witness: That I couldn't answer. Undoubtedly, it would be in an engineering capacity because of his training.

Trial Examiner Myers: He was given an offer to be transferred to some other department?

The Witness: Yes.

Trial Examiner Myers: You had a meeting on January 30th?

The Witness: Yes.

Trial Examiner Myers: There were four or five men there, heads of departments?

The Witness: Yes.

Trial Examiner Myers: Would he be eligible or could he apply to any one of these five men's department? Could Newsom apply to any of these men?

The Witness: Yes.

Trial Examiner Myers: Then, he could be taken out of your department and sent to any one of these five?

The Witness: Yes, to any other department if he had made his transfer wishes known. They certainly would have considered it as proven by many other cases in our company where men have not been satisfied in one particular department or one type of work, have been transferred to other departments and have made very good successes of themselves. [210]

(Testimony of Harold L. Warden.)

Trial Examiner Myers: But these men had decided to get rid of him entirely?

The Witness: No, termination of employment in our particular department.

Q. (By Mr. O'Brien): Was anything discussed at this meeting other than the training program and the discharge of Newsom?

A. During the time I was there that was the content of the discussion. I don't know whether the meeting concluded afterwards or not.

Q. What did Mr. Hathaway have to say about his talk with Mr. Jewett, again? I don't know what Mr. Hathaway told you at that meeting.

A. Mr. Hathaway didn't tell me specifically, he was telling the entire group present, that he had had earlier an opportunity to talk with Mr. Jewett at which time he had told Mr. Jewett that one of the men who were making application for union representation was under a cloud or under a shadow because he was not doing satisfactory work.

Mr. Jewett's reply as stated by Mr. Hathaway was, "You have an employee that is not doing satisfactory work. You are not required to keep him and that his discharge would have no effect—that his discharge, removal or termination of employment, would have no effect on the union's negotiations with the men."

Q. So, if I get this sequence correct, the company gets a copy of the letter from these instrument technicians. After they receive that Mr. Hath-

(Testimony of Harold L. Warden.)

away talks to Mr. Jewett? It would have to be that way.

A. I don't know. I don't know the date and Mr. Hathaway did not specify the date on which he talked to Mr. Jewett.

Trial Examiner Myers: Did Mr. Hathaway know that anybody was applying for permission or desiring to have the I.B.E.W. represent the technicians prior to the receipt of this letter?

The Witness: Mr. Hathaway, to my knowledge, had not been informed of any activity by the men in their desire to join the union.

Mr. Luce: May I interrupt? I object to this line of questioning because it is calling for the conclusion of the witness and Mr. Hathaway is the best one to say.

Trial Examiner Myers: Was there any discussion about any representation of the I.B.E.W. prior to the meeting of January 15th and prior to the receipt by the company of the letter of designation of January 15th?

The Witness: I know of no information on that nature.

Trial Examiner Myers: As far as you know?

The Witness: Yes.

Trial Examiner Myers: Did Mr. Hathaway say anything to you about any other instrument technicians wanting to be represented by the I.B.E.W. before January 15th of this year?

The Witness: No, he did not. [212]

Mr. O'Brien: I don't know whether the objec-

(Testimony of Harold L. Warden.)

tion was sustained, so I will try it again with roughly the same question.

Q. (By Mr. O'Brien): Did Mr. Hathaway tell you that he had told Mr. Jewett that the man under a cloud was interested in the I.B.E.W.?

A. Yes.

Q. One more thing, you say Mr. Hathaway asked the group assembled there what should be done about Mr. Newsom, is that right?

A. That is correct.

Q. Who first suggested that Mr. Newsom be discharged?

A. I don't know who was the first that made the suggestion.

Q. Wasn't it in Mr. Hathaway's question itself, "What would you think about letting Mr. Newsom go?"

A. No, as I remember his words quite distinctly, "What should we do about this man?" He did not infer to his statement, to my interpretation, any reference that the man be discharged or terminated at that particular time. He asked it as a general question of what shall we do with this man.

Q. Mr. Hathaway didn't tell you why he talked to Mr. Jewett about this problem? A. No.

Q. Anyway, you didn't make the first suggestion that Mr. Newsom be discharged? [213]

A. No, sir.

Trial Examiner Myers: While you are going over your notes, I want to ask the witness a question.

(Testimony of Harold L. Warden.)

Did Mr. Hathaway at any time this year have any people in his department who were under a contract that the company had with the I.B.E.W.?

The Witness: Yes, the largest portion of the men working for Mr. Hathaway were working under the contract of the I.B.E.W.

Mr. O'Brien: That was a point I was coming to, Mr. Examiner, with your indulgence.

Q. (By Mr. O'Brien): Mr. Newsom was not offered a job in any other department?

A. He was offered the opportunity to make application for transfer to any department he saw fit.

Q. He had that opportunity at any time?

A. And I have that opportunity.

Q. Yes, and I can make application at any time with the Gas Company.

Mr. Luce: That is not the question.

Trial Examiner Myers: Let's not get too frivolous.

Mr. O'Brien: My apologies. withdraw the question.

Q. (By Mr. O'Brien): My next question is what would follow the application for making a transfer?

A. Having made the procedure once myself, I would like to use my own thing as an example if I am permitted. [214]

Trial Examiner Myers: Go ahead.

The Witness: I was working for the transpor-

(Testimony of Harold L. Warden.)

tation department. I didn't like the type of work I was doing, it was night work. However, my work record had been satisfactory and I went to the superior and asked his permission to transfer to another department, stating my reasons.

He acknowledged my reasons and believed that they were good. There were many personal family reasons involved in it——

Trial Examiner Myers: What do you mean, "family reasons?"

The Witness: My little boy was just starting to school and——

Trial Examiner Myers: That is enough.

Q. (By Mr. O'Brien): All I want is the physical procedure were I to apply for a transfer.

A. I would like to go ahead.

Trial Examiner Myers: Let's not go into too much of the details. What is the physical procedure?

The Witness: You go to your superior, state your reasons for the transfer, make your application to the personnel department for the type of work that you are interested in, or that they might have available for you——

Trial Examiner Myers: Must there be a job available?

The Witness: Yes, of course, you are continuing to work. You make application to the personnel department that you are desirous of a transfer to a specified job. You can specify that job yourself or you can go to the personnel department and

(Testimony of Harold L. Warden.)

discuss your problem with them, asking them what they have that you are qualified for in another department that would suit you more.

When a position is located to the satisfaction of the employee, then the superintendent, or the supervisors of the two positions involved, the position from which the man is leaving and the one he is going to, contact one another and they decide between themselves if the transfer is agreeable between the two departments, or whatever arrangements are made, and the man is then notified of the transfer being in effect. He then reports to his new department.

Trial Examiner Myers: The important thing is the agreement between the supervisors, one letting him go and the other being willing to take him?

The Witness: That is a consideration, however, I don't know of a supervisor who holds a man back.

Trial Examiner Myers: Usually a transfer is a promotion.

The Witness: Not necessarily.

Trial Examiner Myers: It may not be.

Was Newsom offered a transfer to a particular department?

The Witness: No, sir.

Trial Examiner Myers: They just said, "You get out of this department and you try to get a job elsewhere with the company"? [216]

The Witness: He was told he was not satisfactory in the department he was now working; that he would have the opportunity to make applica-



(Testimony of Harold L. Warden.)

tion for transfer to some other department, resign or be discharged.

Trial Examiner Myers: While this application was pending in another department, what must he do?

The Witness: If that application had been made during the two weeks' period of time, from the time he was told that until the termination of his employment, I believe the company's position would have been, as indicated by other applications of transfer, that he would probably be retained on his present pay scale until the details of a transfer could have been arranged between Mr. Newsom and any other department in the company.

Trial Examiner Myers: Supposing there was no job available in any other department where his qualifications fit or that the supervisor of that department, in case there was an available job, did not want Newsom. How long would the company keep him in your department?

The Witness: That is a question I couldn't answer in any particular length of time except that in another instance I know of a man who made application for transfer and there was no job available for him. This particular man stayed in the department, I believe, in the neighborhood of four months or longer before the transfer materialized, and then he went to the transferred position.

Trial Examiner Myers: On that instance, was he considered to be unworthy of the job he was holding?

(Testimony of Harold L. Warden.)

The Witness: Yes.

Trial Examiner Myers: And the supervisors wanted to get rid of him?

The Witness: The supervisor deemed it necessary to remove him from the job he was performing because he was not satisfactory.

Trial Examiner Myers: And kept him on the job for four months regardless of the supervisors' desire to have him out of the department?

The Witness: The supervisor was informed of the man's intention of making a transfer, and the policy of the company, I believe, from my own observation in the length of time I have worked for them, that they are most considerate in trying to assist any man in organizing and fitting himself into any specific job.

Trial Examiner Myers: In this case that you refer to, the four months case, the man made the application voluntarily, didn't he?

The Witness: No, sir, he was required.

Trial Examiner Myers: By his supervisor?

The Witness: He was given notice of termination of employment, transfer or discharge and the man chose the alternate of transfer.

He started his transfer proceeding, contacted the personnel office and at that particular time there was no job that the man could qualify for. However, there was an indication of a job which might develop in the very near future and the man was retained in his position, until a transfer was effected, to a job he was satisfied with and could handle.

(Testimony of Harold L. Warden.)

Trial Examiner Myers: And it took four months for that?

The Witness: I believe it was about that time.

Trial Examiner Myers: I mean, approximately four months?

The Witness: Yes.

Trial Examiner Myers: Now, in other words, if Newsom had made application to be transferred to some other department, he would have been kept there in your department until the transfer went through?

The Witness: I believe that would have been the procedure.

Q. (By Mr. O'Brien): That was not explained to him, was it?

A. Not in detail, possibly.

Q. One other problem with respect to transfer. Both operating and maintenance departments are under the union contract? A. Yes.

Q. And do they have seniority or layoff clauses?

A. Not being familiar with the union contract, I don't know.

Q. But in any event, the union would have to be consulted about putting Mr. Newsom in an equivalent position which might be ahead of some union member?

Mr. Luce: Objected to as calling for the conclusion of the witness. I don't think we want to be bound by somebody's guess as to what the union's attitude or contract would be. If you want the contract, we can supply it.

(Testimony of Harold L. Warden.)

Trial Examiner Myers: If he knows.

The objection is overruled. You may answer.

Mr. Luce: May I suggest that we ask about the rules of the company?

Trial Examiner Myers: If you know the rules of the company with respect to the seniority you may so state.

The Witness: In respect to the union by-laws and rules, I have not been in the union——

Trial Examiner Myers: Not with the union, the company.

The Witness: The company's rules I understand pertaining to jobs not covered by the union contract.

Trial Examiner Myers: What job could Mr. Newsom apply for which he would be qualified for, which would be accepted that would not be covered by the contract?

The Witness: There are a considerable number of jobs in the company that are not covered by the contract. [220]

Trial Examiner Myers: For which he would be qualified? Taking into consideration his experience, his seniority and his length of service with the company?

The Witness: That I don't know. I don't know his qualifications well enough to say that he would be qualified for any specific type of work.

Trial Examiner Myers: I mean a comparable job. His service of three years with the company would fit in with the company business. Of course,

(Testimony of Harold L. Warden.)

he wasn't going to apply for some job that just took manual labor. You were his boss. What job do you think he would be qualified for along the lines of the training that he has and one with comparable salary.

You suggested or one of the supervisors suggested he apply for a transfer. What department did you have in mind, the shipping department?

The Witness: I had no department in mind. There are needs for good men in our company and the personnel has the particulars of the needs.

Newsom has abilities. He has ability to learn. He is personable, and he is likeable. [221]

\* \* \* \* \*

Cross Examination—(Continued)

Q. (By Mr. O'Brien): Mr. Warden, I will ask you to look at Respondent's Exhibit No. 2. I believe you have a copy of that before you.

Does that include all the work that was done by Mr. Newsom during the month of January, 1951?

A. It does not, no, sir.

Q. What other records are there of Mr. Newsom's work?

Perhaps I could help you. The daily log would show the work he did during that period? [223]

A. That is correct.

Q. And I assume he made other boiler tests than are shown in Respondent's Exhibit 2?

A. Not during the latter part of January, no, sir.

(Testimony of Harold L. Warden.)

Q. This is only supposed to cover the latter part of January?

A. Yes, primarily, because of the fact it was on the 15th of January that I assigned Mr. Newsom as a routine at Silver Gate.

Q. You think this is primarily intended to cover two weeks' work?

A. It only covers the two weeks' period.

Q. In addition to Respondent's Exhibit No. 2 and the log, are there any other records of Mr. Newsom's work during the two weeks?

A. Yes, I believe there are others.

Q. Did you have any particular reason for not including them in Respondent's Exhibit No. 2?

A. Because there were no errors on those records.

Q. Did you check the records of the work of other instrument technicians during the same period?      A. Yes.

Q. And you also checked the errors in their work?

A. The work that was done was not too readily checked for errors because there was no routine being done at either station during that period of time. Other than routine work, there is no specific records except for the routine work. [224]

Q. You say there was no routine being done at Station B during the latter part of January?

A. I believe that is correct. I don't know if we did any during that period of time. If it was done,

(Testimony of Harold L. Warden.)

the records were checked and were found to be acceptable.

Q. How long did it go without routine?

A. Approximately the same length of time as Silver Gate. From August until the first of the year.

Q. That is a period of at least five months?

A. That is correct, yes.

Q. Had there been other periods when one station or the other had gone without routine?

A. Yes.

Q. What was the longest period?

A. I don't remember any exact time. In each year during the overhaul period, we omit the routine in preference to the overhaul work.

Q. What is this job instruction book that you refer to in your testimony?

A. It is the instruction book that we have at each station outlining in some detail, but not complete explicit detail, what is required by the items mentioned, numerically, and then set down by description.

Q. That is, Pages 2 and 3 are taken from the job instruction [225] book?      A. Yes.

Q. The job instruction book would have about how many pages?

A. It has quite a number, covering the routine complete. I haven't counted them. I would estimate approximately 25 or such pages in each book.

Q. What is Page 2 inserted for?

A. Page No. 2 of this exhibit covers——

(Testimony of Harold L. Warden.)

Q. I mean why was it included?

A. Because it covers the weekly work and the weekly work in the second column was in question, particularly, Item No. 4.

Q. (By Trial Examiner Myers): What is your notation on Page 2?

A. Items No. 2 and 3 are to be done by the regular man at the station.

Q. And was Newsom one of the regular men?

A. No, sir, he was not considered a regular man while he was assigned routine duties.

Q. You put that notation on that sheet?

A. Yes, I did.

Q. When did you do that?

A. Quite some time ago.

Q. Before February 1 of this year?

A. Yes, definitely.

Q. Does each technician have a book containing the rules? [226]

A. No, sir, there is one book at each station.

Q. The technicians are required to consult the book from time to time?

A. Yes, that is the purpose of the book so that the technicians can have the information available to them.

Q. That notation is that the technicians are not to bother with No. 2 or No. 3?

A. That note is there so that the regular assigned man is not held responsible for taking the head tank samples or checking the water test stations on a weekly basis at Silver Gate.



(Testimony of Harold L. Warden.)

Q. And, reversely, the technicians are not supposed to bother with No. 2 and 3?

A. The man assigned to routine is not to do that, but the technicians are more or less assigned at the stations for a period of time and are asked to make these samples and to make the checks.

Q. In other words, whoever is regularly assigned to the stations should perform the four functions?

A. No, sir, two functions, Items No. 2 and No. 3.

Q. What about Items No. 1 and 4?

A. Items No. 1 and 4 are to be carried by the man assigned with the routine.

Q. When a technician is assigned, regularly, to a station he only performs Items No. 2 and 3?

A. That is correct.

Q. When he is not assigned, permanently, to the station, he is to do No. 1 and No. 4?

A. That is correct.

Q. In other words, sometimes these two technicians assigned to the station would not perform No. 1 and No. 4?

A. That is the procedure we work and it has worked quite satisfactorily.

Q. I just wanted to clear that up in my mind.

A. There is more than one technician at a station at a given time.

Q. (By Mr. O'Brien): With reference to Pages 2 and 3, does that describe all of the routine work?

A. It describes only the routine work required on a weekly basis and on a monthly basis.

(Testimony of Harold L. Warden.)

Q. But you said there have been periods of months when there has been no routine done?

A. That is correct.

Q. Would you say it is the exception rather than the rule to keep this weekly routine?

A. No, sir, it is the rule.

Q. Except when you are too busy?

A. Except during the overhaul period.

Q. Is making a boiler check part of routine?

A. Yes. [228]

Q. And where would that appear on Pages 2 and 3?

A. That would be indicated as Item No. 3 on Page 3 of the exhibit.

Q. In regard to these boiler checks, referring to Page 4, would you happen to know when the boiler check was made before January 18th, 1951? I mean, did you examine that record recently?

A. The routine boiler check on No. 5 had not been done previously to that for some little time. I don't recall.

Q. Do you mean months or years?

A. Months only because the unit was not installed until August, 1950. I am referring to Boiler No. 5.

Q. On Page 6, is that a different boiler?

A. Yes, that is two different boilers.

Q. As far as you know, when was the time before January 18th, 1951, that these boilers were checked?

(Testimony of Harold L. Warden.)

A. I believe the last routine check was made in August, 1950.

Q. Do you know who made that check?

A. I believe it was Mr. Newsom.

Q. And did you look at that check sheet to see whether it was complete?

A. I believe it was.

Q. Do you remember examining all of the records of Mr. Newsom's work? A. Yes. [229]

Q. In February of this year? A. Yes.

Q. And is the matter included in Respondent's Exhibit No. 2 all you can find wrong?

A. Those are the ones that had errors on them.

Q. That is all you could find?

A. That is all the records that showed errors, **yes.**

Mr. O'Brien: That is all.

Trial Examiner Myers: Any redirect examination, Judge?

#### Redirect Examination

Q. (By Mr. Luce): Mr. Warden, you were asked by counsel in what way Mr. Newsom showed disrespect at that conversation between you and Mr. Kalins and Newsom. I think you testified, also, that he had said something about wanting to show you up. If he did, tell us what that was.

A. To the best of my memory, it was that Mr. Newsom told Mr. Kalins that he would like to have a meeting with all the men at which time the charges for his discharge would be given the entire men and that he wanted that meeting so

(Testimony of Harold L. Warden.)

that he could put myself on the spot, or the effect of putting me on the spot would be made in front of the other men.

Q. Did he say anything about "show me up"?  
\* \* \* \* \*

The Witness: In general, as I stated, I do not remember the exact words, but it was to show Warden up or to put Warden on the spot. Both of these terms were used.

Q. (By Mr. Luce): That was the conference on January 31st?           A. That is right.

Q. Now, Mr. Warden, another thing in your testimony. You were asked to state the capacity of the two powerhouses, Station B and Silver Gate. I believe you used the expression that Station B had the capacity of 100,000 megawatts, is that correct?           A. That is not correct.

Q. What is the correct capacity?

A. 100,000 kilowatts.

Q. What is the capacity for Silver Gate?

A. It has a rated capacity of 160,000 kilowatts.

Q. In other words, you used the term megawatts when you should have used the word kilowatts in measuring the capacity of the stations?

A. I don't know if I understand your question.

Trial Examiner Myers: The figures you gave us are correct?

The Witness: That is correct.

Mr. Luce: That is all.

Q. (By Trial Examiner Myers): Mr. Warden, I think you testified, and if I am in error, please correct me, that at one of the meetings that you

(Testimony of Harold L. Warden.)

attended when Newsom and the other technicians were there, that there was some talk about these people not being eligible to join the union, or the union had no right to represent them because of the confidential nature of the work of the technicians. A. Yes.

Q. Who brought up that discussion? Who posed that question?

A. I believe, if my memory is correct, that Mr. Hathaway mentioned there might be some possibility that the men would not be eligible to join the union because it would be necessary for the company and the union to agree as to whether or not the type of work we are doing would be of a confidential nature.

I believe that statement was made during the meeting when all of us were in Mr. Hathaway's office in the afternoon of the 15th of January.

Q. That was the first meeting of the employees and Mr. Hathaway—when I say the employees, I mean the technicians—when you discussed for the first time the union designation of these technicians?

A. That is correct.

Q. Did Mr. Hathaway say why he brought that up?

A. No, sir, I don't believe he did.

Q. Well, did he say his position or the company's position as to the union designation of the technicians?

A. He stated his position inasmuch as he could not see any reason for the men not joining the

(Testimony of Harold L. Warden.)

union because the largest portion of the employees under his direct supervision are union members and have a very enjoyable relationship between the workers and himself.

Q. Did he say that the technicians shouldn't join the same union that the other employees belonged to, or should not join any union?

A. No, sir.

Q. What was the discussion about?

A. Why that one point was brought up?

Q. About the confidential nature of this work.

A. It was during the general discussion that we had with Mr. Hathaway, during which time the men had stated that they hadn't officially made their decision and were talking in a general manner as to the pros and cons in regard to joining or not joining the union.

Q. I think Mr. Newsom testified in regard to the technicians and the confidential nature of the work that some discussion was had about watchmen not belonging to the union; do you remember that?

A. Yes.

Q. Would that help you to tell us about the entire discussion about that?

A. In my memory, I remember nothing being mentioned in regard to watchmen during the meeting with Mr. Hathaway. I don't remember whether the watchmen belong to the union or not. [233]

Q. I don't mean the watchmen of your company, but in general.

A. I don't recall anything of that nature.

(Testimony of Harold L. Warden.)

Q. Or guards?

A. I don't recall anything of that nature coming up at that meeting.

Q. Was it discussed with you at any time?

A. No, sir, I don't remember.

Q. The point is not too clear in my mind why the question of confidential work was brought up and what was said.

A. To the best of my memory, as I said, sir, I don't remember what preceded the statement of Mr. Hathaway's that would bring that point out. I am trying to remember. It seems in my memory that something was mentioned as to the possibility of whether or not men would be able to join the union, and I believe that possibly was brought forth by one of the instrument men themselves. It is hazy in my mind and I don't remember.

Q. Did he say why he didn't think he would be allowed to join the union or the union would accept him?

A. Do you mean Mr. Hathaway?

Q. Or anybody else.

A. No, sir, Mr. Hathaway only stated that it would be necessary for the union and the company to agree as to whether or not the work of the men was of a confidential nature. [234]

There are, I believe, certain employees of our company who are not eligible to become a union member and is acknowledged as such, in general, with the union.

(Testimony of Harold L. Warden.)

Mr. Luce: Is that what Mr. Hathaway said, that which you are now telling us?

Trial Examiner Myers: Just tell us what was said. Strike out how you construe the contract. The contract is not in evidence and we don't want any discussion about it.

Q. (By Trial Examiner Myers): Now, at this meeting was anything said about job descriptions of the technicians? Later on, I believe, you procured a description of their jobs?

A. I don't believe there was anything mentioned of the job descriptions at that meeting.

Q. How did you happen to secure from the personnel office a copy of the job descriptions?

A. At the request of Mr. Fowler.

Q. And did he tell you why he wanted it?

A. Yes, that they were preparing their case in regard to asking for more money.

Q. Did he say he wanted to show the union that the job was not of a confidential nature and therefore he was of the opinion that the technicians were eligible to be represented by the union?

A. No, sir. [235]

Q. He just wanted a copy of the job descriptions to give to the union?

A. No, sir, he did not. He said the purpose of it was in assisting the instrument men in preparing their case to be presented to the union so the union could ask or make the demands on the company for more money.



(Testimony of Harold L. Warden.)

Q. That is what the purpose was, to give it to the union? A. Apparently so.

Q. He obtained it for the purpose of communicating it to the union, what his job and the other technicians' jobs really were? A. Yes.

\* \* \* \* \*

JOHN T. HARDWAY

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

\* \* \* \* \*

Q. (By Mr. Luce): Mr. Hardway, what is your occupation?

A. Lieutenant in the United States Navy.

Q. Where are you stationed?

A. San Francisco Naval Shipyard.

Q. You reside there at the present time?

A. I do.

Q. Now, when were you first employed or connected with the San Diego Gas & Electric Company? A. The latter part of June, 1946.

Q. And in what capacity?

A. As a junior engineer.

Q. Now, prior to your employment by the San Diego Gas & Electric Company, what had been, generally, your experience. [237]

A. I had just been released from the Navy at that time. Prior to that I had been in school getting my degree in engineering.

(Testimony of John T. Hardway.)

Immediately after graduating, B.S.M.E., I came into the company's employ.

Q. Were you trained in any particular line?

A. As a mechanical engineer.

Q. After you became connected with the company, when did you first come in contact or acquainted with Mr. Newsom?

A. I came into personal contact with him after I became efficiency engineer.

Q. When did you become efficiency engineer?

A. November, 1948.

Q. What were your duties as efficiency engineer?

A. Supervising the test department with respect to maintenance and repair of all automatic instrumentation. Also supervising all tests and calculating in the laboratory, solving any engineering problems which the superintendent of electrical production might give us for solution, possibly of an engineering nature. But the biggest responsibility was the instrument portion of that department.

Q. Who was your immediate superior?

A. Mr. Hathaway, superintendent of electrical production.

Q. Who was immediately under you? [238]

A. Mr. Warden—not, it was Mr. Geiger when I first became efficiency engineer and then Mr. Warden succeeded Mr. Geiger as instrument engineer.

Q. Then, when did you leave to go back into the service? A. At the end of August, 1950.

Q. And you were succeeded then by Mr. Kalins?

(Testimony of John T. Hardway.)

A. That is correct.

Q. And, prior to your leaving, Mr. Kalins was your assistant, is that correct?

A. That is correct.

Q. Now, will you tell us when you first had personal contact with Mr. Newsom?

A. Well, first, when I became efficiency engineer he was an instrument technician B at that time. Our procedure is to become personally acquainted with the people under our supervision. At that time he was doing rather well and there had been no complaint turned over to me by my predecessor. He was doing the work satisfactorily for his immediate supervisor at that time.

Q. When did you first observe, if you did, any inefficient work on his part?

A. Approximately June, 1949, or 1950, rather.

Q. June, 1950? A. Yes.

Q. State what occurred at that time and what conversation, if any, you had with Mr. Newsom.

A. Well, prior to that meeting that I asked for with Mr. Newsom, Mr. Warden came to me with a series of complaints that Mr. Newsom was not putting out the required amount of work.

Mr. Warden's instructions were at that time from me that any time we had a specific case, in other words, something definite that we could ask Mr. Newsom about, to let me know.

In June, Mr. Warden came in and said, "Well, the log is defective," that the work he should have done or the amount of work he should have done

(Testimony of John T. Hardway.)

did not appear on the log.

At that time I asked him to get him in the instrument office at Station B and the two of us went down and I talked to Mr. Newsom at that time.

Q. Will you tell us what was said by you and the reply made by Mr. Newsom?

A. Well, I tried to keep it more or less on a friendly basis as to the idea that it wasn't a bawling out, but simply a request for information to see if there was actually ground for Mr. Warden's complaint. I tried to be as fair as possible about it and I thought Mr. Newsom should be able to give us his side on the two days in question when the log showed a small amount of work, which I felt was not a full day's work.

He offered the excuse that he had not been feeling well and, in the course of the conversation, he brought out the fact that he had been overhauling the Orsat apparatus but had neglected putting it on his log. [240]

That amount of time, I really felt, was a little generous even for overhauling an Orsat apparatus because I had done that work myself previously. It was prima facie evidence that the man had been slacking and I tried to explain that the log was very important; that they were not primarily a check on how much the man did—I think that has been a little overemphasized—but rather a record of what was done so that if anything should happen some person would be able to check and

(Testimony of John T. Hardway.)

see when a certain piece of equipment had been checked and looked into.

Of course, indirectly you use that as a measure of a man's work and having spent a short while as junior engineer in the instrument section myself, doing the same work as an instrument technician, I felt I had a better idea of what could be done in eight hours.

Q. Did you tell that to Newsom?

A. Mr. Newsom was under the impression—I felt he knew that I had had that experience.

Q. What did he say to you and what did you say to him?

A. In regard to the work, that we tried to work as a group there, and this wasn't a bawling out, that I was merely pointing out a possible deficiency and if he had an excuse to offer I would be very happy to hear it.

If he was at fault, we would like to do anything we could to help him at the time. That was the point he brought up, the fact he had spent quite a little time on the two jobs in question and had worked some extra time; that he had omitted it on the log, and just in case there had been some misapprehension about being qualified for the job—I shouldn't say misapprehension—I asked him if he liked instrument work and I received the reply that he did.

I based that on my feeling that a man doesn't do a really top-notch job——

Q. We are talking about the conversation.

(Testimony of John T. Hardway.)

A. Yes.

Q. What other conversation did you have at that time?

A. That was the substance of the entire conversation.

Q. Was anything said in conclusion by you?

A. More or less just a remark that I hoped that he would improve, as I remember.

Trial Examiner Myers: Just the two of you were there?

The Witness: No, Mr. Warden was present. I don't like to talk to subordinates——

Q. (By Mr. Luce): Just the conversation, please. You said you hoped he would improve. What did he say?

A. He promised that he would.

Q. When was the next time any matter was called to your attention? [242]

A. Approximately six weeks later. Mr. Warden, upon my question as to how Newsom was doing, said he had been doing all right but seemed to be slipping again. However, I didn't take any action at that particular time.

I did have a complaint from Mr. Campbell, the Station Chief, that there had been some horse-play by Mr. Newsom and Mr. Webb, who had been working together at Station B, which he objected to. At that time I asked Mr. Warden to investigate. It was a matter of a sign, supposedly humorous, pasted to the wall. He investigated and reported Newt had denied being responsible for

(Testimony of John T. Hardway.)

that, and as far as that was concerned, that closed the matter. I did relate the matter to Mr. Campbell, but that closed the matter with Mr. Campbell with reference to that specific instance.

However, I did have another mention of horse-play, just general, and I asked Mr. Warden to drop a hint that that wasn't the accepted thing within the station.

Q. When did you next hear of any complaints?

A. At one time, I can't remember whether it was before or after Mr. Campbell's particular complaint, Mr. Prout called and complained that Newt, being at Silver Gate at the time, had not complied with a request to fix some gauges. When I queried Mr. Warden about the matter, it was a situation in which Mr. Newsom had been instructed, through Mr. Warden, that whenever a station chief or an assistant chief made a request that was not an emergency, for him to contact Warden immediately so that it could be worked in in the day's work. He had not done so and Mr. Warden looked into the matter for me and reported that the work he had assigned to Mr. Newsom was not being done to his satisfaction; that when he talked to Mr. Newsom about that work it was the excuse that Mr. Prout had requested some other work meant to be done on that, and, of course, when we came back and asked him about Mr. Prout's work, there was the excuse that the work had been assigned by Mr. Warden. The impression I got was that neither work was being done too well.

(Testimony of John T. Hardway.)

Q. Did you talk to Newsom further?

A. Only one other time, more or less as a chance meeting, in the instrument office at Silver Gate. That was a matter of overtime. Mr. Warden had said that he had had a complaint from Mr. Newsom that he had not been getting his share of overtime. I felt the inquiry did not require too much formal investigation and the next opportunity I had of meeting Newsom I looked into the matter a little bit. I was satisfied in my own mind that the complaint was not warranted. Newsom had been losing out on a little bit of overtime, but he had been very fair in keeping a record of which technicians had overtime and offering them the opportunities in turn with the idea that if they had other business and could not work overtime, the second man on the list was given that overtime instead.

Mr. Newsom was in some glee club at the time and it was not convenient for him to work overtime at the particular time requested. [244]

Mr. Warden's procedure was quite satisfactory and required no other remarks by me.

Q. Did you hear Newsom criticize Warden?

A. No, sir, I never did.

Q. Did you check or investigate the work of Newsom and the other technicians in regard to how the work was going on in the combination of the different men?

A. Yes, I had a report from Mr. Warden, again. I asked him how things were going. It ran in



(Testimony of John T. Hardway.)

conjunction with the horseplay complaint. Mr. Warden had reported to me that the work had not progressed too well and Mr. Newsom was paired with one of the other technicians. The log, over a period of time, seemed to indicate that when Mr. Newsom was paired with one of the other technicians that neither one of them did any amount of work. Yet, you could take any one of the other technicians and put him by himself and it was surprising the amount of work listed on the log jumped.

At one of my suggestions Mr. Warden paired two of the other technicians together, without Mr. Newsom, and the work again held out. Back pairing with Newsom, the work dropped again and Mr. Warden's instructions were that when Newsom was not working under his direct supervision, that for a period of time we put him on routine where he would be working by himself, without someone to talk to. Under these conditions he would put out a fair amount of work.

Q. Did you set up a system of rotation?

A. Yes, I did.

Q. That is, of the technicians?           A. Yes.

Q. What do you mean by a system of rotation?

A. Well, we had been faced with a problem of securing qualified technicians who were familiar with both stations, and with the fact that we felt we would like to rotate Mr. Newsom around a little bit and equalize the undesirable work. So that no one could feel he was being picked on, we tried

(Testimony of John T. Hardway.)

to set up a rotation policy where one would take the routine at both stations for three months and the rest of the technicians would be working on either overhaul or the regular work that was occasioned by instrumentation.

Q. During the period that you were efficiency engineer, you had occasion to observe the work of Newsom and the general attitude of his superiors, did you not, towards him and their opinion of his work? A. Yes.

Q. And did you come to a conclusion before you left as to what should be done about Mr. Newsom?

A. Yes, I did, but I got my orders too soon to carry them out.

Q. Did you think up to that time that the character of his work permitted either a termination of his employment or a termination so far as the instrument department is concerned? [246]

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Q. (By Mr. Luce): In your opinion was the character and quality of Mr. Newsom's work, at the time you left, sufficient to warrant his dismissal?

\* \* \* \* \*

The Witness: I won't say it was that bad, but I will say it was unsatisfactory enough that I would have gone into a rather detailed investigation. I would have taken the time myself to have gone into a greater detail, which otherwise was not warranted, and would have come to a final conclusion then whether his removal was justified.

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(Testimony of John T. Hardway.)

Q. (By Mr. Luce): Mr. Hardway, did you ever write a letter recommending Newsom and Webb to Mr. Hathaway? A. No, sir. [247]

Q. Did you ever write any letter or make any report in which you reported Newsom's work as being satisfactory or recommending his high character of work?

A. Not the high character of work.

Q. Anything similar to that?

A. Nothing at all in writing. Orally, I have said, and I still say, that he is a personable young man, but I wasn't satisfied with his work. There was however, no recommendation.

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#### Cross Examination

Q. (By Mr. O'Brien): You say you worked as an instrument technician. Who was your superior?

A. I was paid as a junior engineer, under the supervision of Mr. Stovall, but I was working as an instrument technician under the supervision of Mr. Geiger, who was instrument engineer at the time.

Q. You must have been working side by side with Mr. Newsom?

A. No, sir, because Mr. Newsom came with the department, I believe, after I was removed from the instrument gang and had taken over my duties as junior engineer at Silver Gate.

Q. So there was an interim when you were out of the instrument department? A. Yes.

(Testimony of John T. Hardway.)

Q. When you came back as efficiency engineer—that was your title? A. It was, yes.

Q. —who were your instrument technicians?

A. Mr. Geiger as instrument engineer, Mr. Warden as instrument technician A, Mr. Newsom and Mr. Bill Porter. That was it.

Q. Mr. Warden we know was promoted?

A. Yes.

Q. Mr. Porter?

A. He resigned for a more lucrative position.

Q. Then, in order, who was your first replacement for Mr. Warden and Mr. Porter?

A. You mean after Mr. Warden became instrument engineer?

Q. We started out with a staff of Geiger, Warden, Newsom and Porter. What were the changes?

A. Mr. Geiger became junior engineer, Mr. Warden became instrument engineer—

Q. And the replacements as they came along?

A. The first replacement was Ollie Webb.

Q. Did you have anything to do with interviewing Ollie Webb? A. Yes, I did.

Q. And did you have anything to do with assigning him to work with Mr. Newsom?

A. He was hired on my recommendation as an instrument technician. The work assignment I left entirely to Mr. Warden's discretion.

Q. After Mr. Webb, who was next?

A. Roy Shroble.

Q. Did you again hire Mr. Shroble?

A. I did.

(Testimony of John T. Hardway.)

Q. How long did Mr. Shroble work for you?

A. Approximately two months. He was the last man who was hired while I was instrument engineer or efficiency engineer.

Q. Are those all of the instrument technicians that worked under you then? Newsom, Porter, Webb and Shroble?

A. We had one helper assigned to use for one short period, but I had no immediate contact with him.

Q. You don't know his name?

A. No, sir, I don't recall it at this time.

Q. Was it Bob Cole?

A. I had forgotten about Bob.

Q. There was somebody else besides Bob?

A. I think I will draw the line there.

Q. Well, it is your testimony that when Mr. Newsom worked with Mr. Porter that Porter's work fell down?

A. No, sir, Mr. Porter was a senior man at the time under Mr. Warden. Unfortunately, Mr. Porter was an all too rare character. I wish to heavens he had stayed. Mr. Porter was the exception.

Q. In the two months that Mr. Roy Shroble worked under your supervision, how many different technicians did he work with? [250]

A. I believe he worked with them all at one time or another.

Q. It took at least two months to learn the job?

(Testimony of John T. Hardway.)

A. It takes longer than that, but when an instrument technician comes in the work he does is largely as a helper. It is still a two-man job and your output is more or less measured by the output of two men. When that falls down, the whole job falls.

Q. Now, aren't there situations where an experienced man can do the job more quickly by himself than when he is teaching an inexperienced man how to do it?

A. Yes, but from a practical point there were times when the actual teaching went by the board in the interest of getting the job done. That was the reason that this training course was brought into effect, to pick up those missing points.

Q. Isn't it possible that Mr. Newsom's log, while he was working with Mr. Shroble, would show less work because of the necessity of teaching Mr. Shroble?

A. That is quite true, but he was only with me for a period of two months and the period in which I became aware of Mr. Newsom's work was prior to the hiring of Mr. Shroble.

The drops in the work and the pairing of Mr. Newsom was primarily with Mr. Cole and Mr. Webb.

Q. Do you know who taught Mr. Cole the work in the instrument department? [251]

A. Mr. Warden. He also spent some time working with Mr. Porter. The actual training there I left to Mr. Warden.

(Testimony of John T. Hardway.)

Q. Did you observe the work of these instrument technicians?

A. Only on rounds which were made occasionally. I stopped to talk to the fellows to see how they were doing. I depended largely on the log as to what had been done and what equipment was requiring more maintenance than usual.

I had other duties which took care of a larger portion of my time.

Q. Did you, yourself, observe the horseplay?

A. No, sir, I didn't, not out in the plant. However, any complaint by a station chief is time for me to take a look into the matters.

Q. You don't recall when this first complaint by a station chief was made?

A. No, sir, I don't. I will make an estimate it was in the summer of '49, summer or late spring. It was before the main pressure of Silver Gate overhaul started.

Q. What was the incident of the sign on the wall?

A. That was the specific incident when I asked whether the fellows had done it.

Q. You never did find out?

A. No, sir, I was satisfied with their word that they had not done it. However, there was another complaint, nothing specific, just horseplay.

Trial Examiner Myers: Did you say that took place in the spring or summer of 1949?

The Witness: 1950, I am sorry.

(Testimony of John T. Hardway.)

Q. (By Mr. O'Brien): Which station chief was that?  
A. Mr. Campbell.

Q. Did he say "horseplay," and describe what it was?

A. Not on that particular occasion. It was not meant to require disciplinary action; he was passing the word to me and he understood my intent was to pass the word down the line to "take it easy," or "let's watch it."

Q. You didn't know what it was?

A. No, I felt if it was specific enough he would have mentioned it.

Q. Mr. Campbell wasn't particularly concerned?

A. He was concerned from the viewpoint that any horseplay in the plant is not a good thing. One person sees someone else do it and it has a tendency to spread.

Q. You didn't think it sufficiently important to inquire into what it was?

A. No, sir, I didn't. I feel that if a complaint is being made and the man wishes action to be taken, that he will specify exactly what it was. However, the word was passed down the line to take it easy.

Q. You say the Silver Gate chief complained. Did he explain to you about Mr. Newsom's failure to fix gauges for him? [253]

A. The assistant station chief, Mr. Prout, did by phone.

Q. That complaint was made directly to you?

A. Yes.



(Testimony of John T. Hardway.)

Q. Then, you went into some sort of an explanation about Mr. Newsom having received general instructions relative to requests of station chiefs. Did you yourself give Mr. Newsom these orders?

A. No, sir, I passed these orders, which were merely confirmations, to Mr. Warden for his further passing to the technicians involved.

Q. When did you give Mr. Warden these instructions?

A. It was a repetition of already existing instructions that had been customary.

Q. Were these written instructions?

A. They are now. Sometime later, when we set up the rotation policy, we outlined the program in rather a broad phraseology. That filled the need for written instructions governing that procedure. It had been a custom before.

\* \* \* \* \*

Q. You don't know whether he actually formal instructions to that effect?

A. Actually, no. That was an assumption I had to make. [254]

Q. You are assuming that your subordinates carry out your instructions?

A. That is correct.

Q. Can you say that Mr. Newsom was trying to do his own work and trying to do Mr. Prout's, too?

A. In this particular case, we were not trying to be ogreish, but it was a hope that the situation would not arise again.

(Testimony of John T. Hardway.)

Q. And, in any of your talks with Mr. Newsom, did you ever tell him that he would be discharged if the work didn't improve?

A. I don't believe I ever told Mr. Newsom that directly, but I know on one occasion when Mr. Warden—and after this one conversation I had with him, I did make that statement to Mr. Warden. That was left to the discretion of Mr. Warden; whether he repeated it or not, I don't know, but I said it.

However, there again, I would say that any action on my part to discharge a man would have been subject to further investigation.

Q. You wouldn't have discharged anyone from the list of Mr. Newsom's omissions or commissions, the ones you have given us?

A. No, not on those alone, but I feel they are existing examples.

I believe my experience would indicate that at the time I left, if I had not been so busy, and instrument technicians had not been needed so terribly—well, a half man was better than no man.

That is my opinion, and I believe I could have found a lot more than we have discussed here. I still had the impression we were not getting all we were paying for.

Q. If you had really gone over enough records, you could find signs of omission and commission against all of your subordinates?

A. That is true, but on the other hand there are some that are worse than others.

\* \* \* \* \*

(Testimony of John T. Hardway.)

Q. (By Trial Examiner Myers): Did Mr. Warden, while he was the head of the instrument technicians department—I call it that for reason of a better phrasing—ever complain to you about any other instrument technicians?

A. No, he didn't. That is one of the bases of my opinions that there is also a possibility that Mr. Warden wasn't the best supervisor in the world. Yet, on the other hand, Mr. Newsom was the only one, as far as I know, that Mr. Warden had difficulty with. [256]

\* \* \* \* \*

Q. Can you tell me how a log is made up and who does the physical work in the log?

A. Yes, I can.

Q. Please do that.

A. As far as the instrument log is concerned, normally the technicians will use small sheets of paper on which to list their work they have been doing during the day. Sometimes they are turned over at the end of each day to the instrument engineer. Sometimes they are kept and accumulated until the end of the week.

On Tuesday morning, usually, Mr. Warden takes all these slips, copies the instrument technicians' work summary in a daily log, there being one series of sheets for Silver Gate and one for Station B, and on Tuesday afternoon or possibly each Wednesday morning, I requested that it be done by 10:00 o'clock, he would bring these sheets to me.

(Testimony of John T. Hardway.)

In the meantime, I had prepared my own log covering my own work, including that of my assistants, and the three logs were then taken up and placed in a loose-leaf folder in the main office on the third floor at Station B.

Q. What are the routine sheets like? Referring to this first page on Respondent's Exhibit No. 2, is that what you call the scrap paper?

A. Oh, no.

Q. What is this?

A. This is called a routine sheet. It used to be prepared by one of the junior engineers, but during my time the instrument engineer took over the preparation. He makes one of these per month. It is basically a very brief outline of approximately when work should be done.

This is prepared as a guide to be used by the instrument technicians. For instance, I see numbers 2, 5, 1 and 4 on approximately the 15th or 16th of the month. Now, the technicians responsible for the routine work should check on the 15th and see what items he is supposed to do. Then, if he performs those, he will add a check above the number signifying that it has been done. Concurrently, if there is a detailed record of that particular operation, then he will enter those readings on that particular page.

Q. Do you mean Page 4 of this exhibit?

A. Yes. In this particular case, he will submit it to the instrument engineer on these test forms and the instrument engineer then submits them

(Testimony of John T. Hardway.)

to the efficiency engineer. If it is a full-load test, they usually go through a series of calculations to determine the efficiency of operation at that time.

Q. You heard a lot of discussion about the psi on Page 7 of the exhibit? A. Yes.

Q. Can you clear up that for me?

A. Psi means pounds per square inch. That is the normal pressure here in everyday life.

Q. I know that. There was some talk about it should have been inches mercury?

A. Yes, it should have been. In other words, the gauge that was read in this particular case was calibrated in inches of mercury, not psi, and should have been so recorded. That item should have been changed because in the instruction sheets there is a sample data sheet with all relevant readings for each machine checked off and any change is in the left-hand column. Therefore, the technicians, when they prepare their daily sheets, can refer to that and make a corrected daily sheet before tagging the test.

Q. In other words, what Newsom should have done was to change psi to inches of mercury.

A. Yes. [259]

Q. Now, would anybody who has any knowledge of this work—the work Warden was doing, you were doing and Newsom was doing—would they be confused by the mere omission of changing the psi to inches of mercury?

A. In running a calculation you might pick it up as psi. I have done that myself, but have caught

(Testimony of John T. Hardway.)

my error and have gone back and picked up the correct amount.

Q. You would have seen it?

A. I may not have in running through the calculation.

Q. The purpose is to find out whether the turbine was working, or the heat of the water or what?

A. Usually the cleanliness of the feed water heater.

Q. Well, you would have seen that you were taking a pressure of psi instead of inches mercury?

A. Yes, if I had calculated it at psi, I would have had an error.

Q. Would it have been such an error that you would have seen it right away?

A. It probably would have taken 15 or 20 minutes to go back and recalculate it.

Q. All right, what is done with the sheet, page number 7 of Respondent's Exhibit No. 2?

A. They are kept on file.

Q. Is that put in the log?

A. The running of the test is logged in the instrument engineer's log. The calculation of the test, the result, is entered in the efficiency engineer's log.

Q. What data on this page is put in the log?

A. No data is put in the log. These are kept on file and sometime later if we want to find out when a test has been run, we check the file to find that information.

(Testimony of John T. Hardway.)

Q. And if everything was in order, nothing out of gear or anything, everything is O.K.?

A. That is right.

Q. That is what you assume. That the test was run and if there is no comment mentioned, that the test was successful, whatever you tested?

A. Normally, the log is the work that was done that day. If we are seeking out daily information, there is a grouping of the data, but that is not usual.

Q. If there was anything wrong you can go back and fix it? A. Yes.

Q. So that everything up to that point was working right?

A. We assume that. We use these as a trend indication more than actual pinpoint of trouble.

Q. So if any trouble develops you can go back to where you ran a test and see what comes of it.

A. That is right. [261]

\* \* \* \* \*

### B. L. STOVALL

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows: \* \* \* \* [262]

#### Direct Examination

Q. (By Mr. Luce): Mr. Stovall, you are now an officer of the United States Navy, are you?

A. Yes.

Q. And what is your rating?

(Testimony of B. L. Stovall.)

A. Lieutenant-Commander.

Q. What are your present duties?

A. I am assigned to the Industrial Command, United States Naval Station in San Diego.

Q. When were you employed by the San Diego Gas & Electric Company, if at all?

A. You mean initially?

Q. Yes, we will start with that.

A. In 1937 I started working with the special-construction department of the San Diego Gas & Electric Company as a pipe-fitter's helper in the special-construction department.

Q. And how long did you remain in the employment of the company at that time?

A. Until August of 1938, at which time I returned to the University of California for further engineering training.

Q. How long did you stay at the university?

A. I stayed at the university until May of 1940. I was employed by the San Diego Gas & Electric Company during the vacation periods as a student engineer.

Q. And after 1940?

A. I entered the employ of the San Diego Gas & Electric Company again in the electrical production department as instrument technician.

Q. Go on and state your course of employment and training from there on.

A. After serving several months in the instrument-technician group, I became engineering assistant, in which capacity I served until April 27, 1942.



(Testimony of B. L. Stovall.)

At that time I was accepted by the Navy for duty, given a commission as Lieutenant Junior Grade, and served for some 40 months as an engineering officer assigned to the Sub-Board of Inspection and Survey in the Eighth Naval District.

I returned to the employ of the San Diego Gas & Electric Company upon release from active duty in December, 1945.

I went to work at that time as junior engineer and served in that capacity until approximately May 15, 1946, at which time I was appointed efficiency engineer and served in that capacity until sometime in November, 1948.

At that time I became assistant station chief at Station B and served in that capacity until my recall to active duty in August, 1950.

Q. You are still now on active duty with the Navy? [264]           A. Yes.

Q. When did you first come in contact with Mr. Newsom? That is, to know him or know anything about his work, Mr. Cosby Newsom?

A. My experience with Mr. Newsom in a supervisory capacity is rather limited. As I recollect it, it comprised possibly a month on or about October or November, 1948.

Q. Where was that?

A. That was at Station B.

Q. Mr. Stovall, to refresh your memory, wasn't it in 1949, rather than in 1948?

A. I am short on my chronological sequence. My recollection is 1948.

(Testimony of B. L. Stovall.)

Q. At any rate, he did work under you for a short time at Station B? A. Yes.

Q. Did you observe anything in regard to his quality of work in that time?

A. He served under me for the first month of his assignment to the instrument technician group, Normally, training for an instrument technician was done at that time, but due to the exigencies of the work load—the training period would normally comprise a year, at least. For me to judge a man's ability as an instrument technician during his first month is very hard. In fact, it is impossible. [265]

The man has a very good personality, he talks a very good game. At that time I certainly felt that we had a good prospect as instrument technician.

Q. What did you observe as to his work from there on?

A. I was removed from his direct supervision and assigned the job of assistant station chief.

As time wore on, up to six or eight months later, I recollect, not specifically, but generally speaking, that I made three complaints: One to the station chief concerning the horseplay indulged in by Mr. Newsom.

Q. Did you say anything to Newsom about it?

A. No, I approached his superior, Mr. Hardway.

Q. Did you tell Hardway about it?

A. Yes.

(Testimony of B. L. Stovall.)

Q. Now, what about his work as instrument technician? What was the character of that?

A. You mean Mr. Newsom on instruments?

Q. Yes.

A. I have no direct knowledge of it. Part of the time he was assigned any responsibility on instruments I was removed from direct contact with him. My immediate worry was the proper functions of the control end of the plant.

I only observed that complaints from the operating personnel on the functioning of the control instruments were brought to me and subsequently carried by me to the efficiency engineer whose responsibility they are. [266]

This resulted, in almost every instance, a series of instances, in Mr. Geiger doing the work or in Mr. Warden coming to Station B from Silver Gate to take care of the trouble, indicating that at that time, up to six months after the hiring of Mr. Newsom, we still only had two competent people to take care of real trouble.

Q. Well, was Mr. Newsom's work such that you or the operating personnel had confidence in the instruments that he was supposed to supervise?

Mr. O'Brien: I object to that. I am afraid it is a loaded question as well as leading and suggestive.

Trial Examiner Myers: I think you ought to reframe the question.

Q. (By Mr. Luce): What did you observe in respect to the work done by Mr. Newsom during the year 1950, we will say?

(Testimony of B. L. Stovall.)

A. I think Mr. Newsom, as far as Station B was concerned, was engaged only in routine matters. That equipment faults were cared for by Mr. Warden.

\* \* \* \* \*

Q. (By Mr. Luce): Did you observe either the work of Mr. Newsom or Mr. Newsom himself in the year 1950 enough to form an opinion as to the efficiency of his work or his qualifications for that particular job?

A. My personal observation might be stated in this manner: That Mr. Newsom was given to indulging in horseplay, in conversations with any and all who approached him on any particular job. I found my firemen engaged in talking to him by the hour.

I believe that he showed, contrary to the initial concept of his character, a remarkable lack of initiative in attempting to grasp the problems involved. [268]

I found him temperamental and unsuited for the job. That applies only to the instrument technician work.

Q. Did the work improve or otherwise during the period you observed up until you left?

A. I observed no improvement. It was more or less pull and haul all the time.

Q. Would you tell us the general importance of the work of the instrument technicians such as Mr. Newsom?

A. Well, not because I started through that

(Testimony of B. L. Stovall.)

particular door in the plant, but rather from a firm belief, I will state that it is one of the most important functions in the powerhouse. Not from the standpoint of a spectacular explosion the day it is done, but rather because of accumulative damage which equipment can suffer due to faulty setting of temperature and combustion controls.

Q. Well then, faulty work on instruments could cause damage?

A. A poor setting, for instance, on the burner position, register position, can lead to—these are possibilities—a rapid build up of slag in the superheater passes of the boiler due to improper combustions. That, in turn, can lead to excessive abrasive work on boiler tubes within the gas passes. It can lead to heat damage, if you please, further up in the passes of the boiler.

The thing is accumulative and it might occur six months after the improper settings were made.

Q. Well, the interplant operation is related in what way to the instrument regulations?

A. The instrument technician is responsible for the thermal efficiency of the plant from the fuel tank to the generator output. He is actually charged with the mechanics of burning the fuel in the most efficient manner.

Q. What effects, if any, upon the general organization or the plant operation would a lack of confidence in the ability of the instrument technicians have?

Mr. O'Brien: I object to that.

(Testimony of B. L. Stovall.)

Q. Trial Examiner Myers: Overruled. Will the reporter please read the question.

(Question read.)

The Witness: Well, the lack of confidence would initially show up in apprehension on the part of the operators assigned to particular boiler operations. The burning of tremendous quantities of fuel is involved. The fires are some 3000 degrees hot. The combustion spacers are 20 by 30 by 30 and they roar in a very loud manner; instantaneous faults, which occur in the electrical side of the system, cause wide variations in the actual operation of the boiler.

The automatic controls at both stations have to take care of these fluctuations. If they don't, the operators are in trouble. It is possible, if the controls don't work properly, to have the combustion thrown completely off with attendant smoke and the danger of explosion inside the plant itself.

I might add that the principal and most voluminous complaint on controls, faulty control operation, comes directly from the operators who are involved in staying with it 24 hours a day.

\* \* \* \* \*

Q. (By Mr. Luce): When did you leave to go back into the Navy? A. August 24, 1950.

Mr. Luce: You may cross examine.

#### Cross Examination

Q. (By Mr. O'Brien): During what months was Mr. Newsom at Station B?

(Testimony of B. L. Stovall.)

A. I am not sure I remember.

Q. Was he ever at Station B without supervision? A. Yes.

Q. When was that?

A. My recollection again would be in the early months of 1949.

Q. Before he had served even six months as an instrument technician? A. Right. [271]

Q. And he wouldn't be expected to know all the intricacies of the instruments at Station B?

A. I wouldn't expect a person to know it.

Q. During this first month when he spent hours talking to the firemen——

A. Did I say hours——

Q. Yes, you did.

A. All right, I will leave it at that. Yes, he has a very pleasing personality.

Q. He spent hours talking to the operators. Did you spend hours watching him?

A. My instructions were to spend 20 percent of the time in the office and 80 percent of the time finding out what makes them tick.

Q. And you didn't tell the firemen and the operators to go back to work?

A. Ordinarily, they made the courteous concession of going back to work, for which I was very grateful.

Q. Did you complain to Mr. Newsom's supervisor that he was keeping your men from working? A. Yes, I did.

Q. To whom? A. Mr. Hardway.

(Testimony of B. L. Stovall.)

Q. In writing? A. Always verbally.

Q. Is that you mean by horse play, talking to the operators and firemen?

A. No, I am thinking specifically of horse play.

Q. Did you tell Mr. Hardway what the horse play was? A. Yes.

Q. What did you tell Mr. Hardway?

A. I pointed out to Mr. Hardway that on specific occasions Mr. Newsom and Mr. Webb indulged in clowning antics for the amusement of anyone who might be watching them.

Q. Did you describe these to Mr. Hardway?

A. Yes.

Q. What description did you give?

A. Well, as they walked through the plant one man went to his knees while the other stood up and then the other one would go to his knees and the other man would stand up. That would continue and it is very amusing to watch, even to me. It continued all the way down through the plant.

Q. So you made the complaint to Mr. Hardway?

A. I described this particular instance.

Q. Did this happen more than once?

A. That particular thing I didn't observe more than once.

I have observed on other occasions while meters were being calibrated that water was thrown around rather promiscuously, the water that was utilized in the calibration of the meter. [273]

Q. It is not exactly a dry job.



(Testimony of B. L. Stovall.)

A. It can be contained, I assure you. I spent some two years at it myself.

The prime consideration in calibrating meters is calibrating meters, which means you keep the water contained within a certain area.

Q. During the time you were assistant chief at Station B, did you have any serious breakdown of equipment?      A. Yes.

Q. Do you know what was the cause?

A. Well, you could argue that. I am thinking specifically of some eight generators, turbines, and boilers.

Trial Examiner Myers: When?

The Witness: I think it was during the year 1949. It would be 1949 that we suffered some losses due to the heavy loads we ran into.

Trial Examiner Myers: Was Mr. Newsom employed then?      The Witness: Yes.

Trial Examiner Myers: As what?

The Witness: Instrument technician.

Q. (By Mr. O'Brien): Was that breakdown caused in any way by an instrument failure?

A. It very well could have been.

Q. It could have been, but was it?

A. Let me state to you that these damages are cumulative. They result from an operation occurring possibly six months before and I can very well state that the possibility of improper combustion, causing an unbalance in the heat in the furnace, could, over a period of four months, very definitely result in damage.

(Testimony of B. L. Stovall.)

From where I sit now or at any other time I couldn't pin it on any specific man.

I am pointing the need for real care calibration of instruments.

Trial Examiner Myers: Would you attribute it to any fault of the instrument technician department?

The Witness: I would point to the department certainly.

Trial Examiner Myers: That is what I wanted to know.

I don't know anything about this operation and therefore my questions might sound a little odd to you.

The Witness: Not at all, sir.

Q. (By Mr. O'Brien): So if these failures were due to human negligence, you wouldn't know whether it was the operator or any one of the four or five different technicians?

A. The operator depends upon the instruments for the indication of proper combustion. It would largely fall to the instrument group.

Q. There is a possibility that the operator may ignore his instruments? A. I doubt it.

Q. I think you said it was possible for instrument technicians to blow up the plant through negligence. You don't think he would?

A. Not at all.

Q. Of course not.

By the way, you interviewed Mr. Newsom before

(Testimony of B. L. Stovall.)

you took him on as an instrument technician?

A. That is correct.

Q. You had interviewed other applicants for the job at the same time? A. I did.

Q. You believed that Mr. Newsom was the best qualified?

A. I thought so at the time, yes.

Q. During the time that he worked under your direct supervision, you found no fault with his work?

A. That is true, the short period of my direct supervision, yes. [276]

\* \* \* \* \*

JOSEPH L. KALINS

a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

\* \* \* \* \*

Q. (By Mr. Luce): Mr. Kalins, what is your present position with the San Diego Gas & Electric Company?

A. I am efficiency engineer.

Q. How long have you been efficiency engineer?

A. Since the beginning of September, 1950.

\* \* \* \* \* [277]

Q. Would you state the positions you have occupied up to the present time?

A. I started in as a helper in the maintenance force until September of 1946, as I recall. I then became a junior engineer under Mr. Stovall and remained a junior engineer until the beginning of September, 1950.

(Testimony of Joseph L. Kalins.)

Q. Then what happened?

A. At that time I assumed the position of efficiency engineer and took over the duties of Mr. Hardway who was leaving for military services.

Q. Were you an assistant under Mr. Hardway before he left?           A. Yes, I was.

Q. For how long?

A. Since he assumed that position which was in approximately November, 1948.

Q. When did you first become acquainted with Mr. Newsom?

A. I became acquainted with Mr. Newsom at the time he assumed the duties of instrument technician. That should be about October of 1948.

Q. And did you also become acquainted with Mr. Warden at about the same time or prior to that?

A. I knew Mr. Warden prior to that.

I neglected one point in my employment there. As a junior engineer I spent a period of from May of 1948 until possibly December of 1949 doing the duties of an instrument technician. The purpose of this was to familiarize myself with instrumentation.

Q. You have worked under Mr. Warden?

A. Yes, I have assisted him.

Q. You are now his superior?

A. I am now his superior, yes.

Q. You also worked in the technician department or as instrument technician the same as Mr. Newsom, is that correct?

(Testimony of Joseph L. Kalins.)

A. I did the same duties although I was a junior engineer at that time.

\* \* \* \* \*

Q. When did you first observe or have any knowledge of any criticism of Mr. Newsom's work or of any lack of efficiency on his part?

A. I should judge possibly at the beginning of 1950.

Q. What occurred at that time?

A. I cannot answer in any one specific instance. I am thinking of general impressions that I gained at that time. [279]

Q. How did you gain that impression?

A. Certain things I must have overheard from Mr. Hardway and possibly from Mr. Warden.

Q. Was there anything you had observed?

A. Only in the nature of the man. He was capable of a good deal of good natured mischief. It is very difficult to supply any specific instances, however.

Q. When were any defects in his work made known to you? Of Mr. Newsom's work.

A. I knew there had been some difficulty toward May or June of 1950, however, I was not too very well versed with the specific instances involved. I do know there had been difficulty.

Q. When did these first come to your attention in such a way that you did know what difficulty there was?

A. Specifically, when I became efficiency engineer.

(Testimony of Joseph L. Kalins.)

Q. Tell us what happened.

A. At the time I became efficiency engineer, Mr. Warden—

Q. First, tell us about when that was.

A. That was at the beginning of September, 1950.

Q. All right now, tell us what happened.

A. Mr. Warden made several complaints. Complaints of difficulty in being able to do a type of work that he felt his crew should be capable of and the utilization of departmental standards, which is an item that can very well be defined. [280]

Mr. Warden made reference to general things in his difficulty in managing this young man. It was not until sometime later and before, possibly, the beginning of September that he brought me down to Silver Gate and showed me certain things that had been done on Unit 2 which had just been overhauled. I make mention of a specific instance where the gauges and thermometers were mentioned previously in our discussions here.

These gauges were put in, possibly, with no support in holes in the turbine base, possibly just one screw in one or two instances. The thermometers were dirty, for which I could see no excuse. There was one gauge which did have screws in it. In other words, the screws had been applied to the gauge, but they did not belong to that gauge. They had been taken out of the box which the maintenance force was using for certain pieces of equipment on their work.

(Testimony of Joseph L. Kalins.)

Rather than get the real screws, the ones that belonged in that gauge, which were in the instrument shop, he took these special screws in this box belonging in the maintenance force and put them in this gauge, which caused the maintenance force some difficulty when they were short of this particular item.

Q. Now, about that time did you have a conversation with Newsom about this complaint that had been made?

A. Yes, I felt the complaints made by Warden were of such strength that they could not be overlooked, particularly in view of the fact that I knew there had been difficulties previously. [281]

\* \* \* \* \*

The Witness: Yes.

Q. (By Mr. Luce): You had a conversation with him about that time?

A. Yes, that was in the company of Mr. Warden.

Q. You and Mr. Warden and Mr. Newsom had a conversation? A. Yes.

Q. About what time was that?

A. I believe that was in the morning.

Q. Was it in September?

A. September the 18th, I believe.

Q. Tell us what was said at that conversation.

\* \* \* \* \* [282]

The Witness: I told Newsom there was certain things we could not tolerate; that we knew him capable of better work than he was producing; that

(Testimony of Joseph L. Kalins.)

his work was sloppy and that he could cure that by diligently applying himself.

Further, that—I am mentioning the essence of the thing——

Trial Examiner Myers: Just take your time and think about it.

The Witness: There were many other things that were said, but I don't know if I can say exactly what I said.

Trial Examiner Myers: You were asked what was said by everybody, what transpired at this meeting, not just what you said.

The Witness: Well, Newsom wanted to know what the specific instances were, or the specific complaints were, and Warden related each of these things in turn for which Newsom had an answer regardless of what the situation was.

He excused every action that Warden accused him of and became rather excited about some of these things. I began to see there was no possibility of improving the relationship between the two and I asserted myself and said we cannot tolerate this sort of work in our department; that his relationship with his supervisors must improve; that his work must improve, and, if not, he would not be tolerated in the test department.

At this point he asked me what I meant by that and Warden interjected that that meant he would be through, he would be out; he would no longer be in the test department.

He was also advised that his work was going



(Testimony of Joseph L. Kalins.)

to be watched for a while and he said, "How long will my work be watched?"

And Warden said, "It will be watched for a month."

Trial Examiner Myers: Is that the sum and substance of what was said?

The Witness: Basically, yes.

Q. (By Mr. Luce): Now, where is your office located in relation to the place where Mr. Newsom performed his duties at about that time and thereafter?

A. My office has been at Station B and still is.

Q. Where did Newsom perform his duties?

A. Newsom at that time was at Silver Gate.

Q. Where was your office and where was his duties performed, generally, from there on?

A. From that time on he was at Silver Gate for the remainder of that year and most of the time—I do circulate between those stations. [284]

Q. Were there other complaints made in your presence by other officers superior to Newsom about the efficiency of his work after the September meeting? A. No, sir.

Q. You didn't have any discussions with anybody else about it?

A. I didn't quite understand your question before. Yes, we did have discussions, certainly.

Mr. Warden commented on it from time to time and on two or three occasions we had discussed Newsom in Mr. Hathaway's office.

Q. What was the general nature of these dis-

(Testimony of Joseph L. Kalins.)

cussions? In other words, were they complimentary to Newsom or were they uncomplimentary?

A. No, sir, they were not complimentary. We were posed with a problem to do something with this man. Ultimately, something would have to be done.

Q. Now, did you have any conversation with Mr. Newsom after this September conversation in regard to the quality of his work before the discussion of January 31st?

A. I don't believe so.

Q. Were you in Mr. Hathaway's office at the time the technicians were there and Mr. Warden was there on January 15th? A. Yes, I was.

Q. Will you state what occurred in your presence at that time? [285]

A. At that meeting in Mr. Hathaway's office, there was myself, Warden, Newsom, Fowler, Shroble and Webb; also Mr. Botwinis. Everyone was seated and Mr. Hathaway posed the question, "Who is the spokesman?"

Every one looked at the other one and someone voiced the opinion that there was no spokesman. As I recall, Fowler and Newsom spoke more than anyone else and I think either one of them may have started at approximately the same time, but both of them did most of the talking.

Mr. Hathaway asked the question, "Is there anything else involved other than money?" Or, "What is involved?"

And they replied, "Wages."

(Testimony of Joseph L. Kalins.)

He asked if there was anything else involved, and they said no, they were satisfied with all their working conditions.

Mr. Hathaway then told the men to consider what possible benefit they could gain from the union and to weigh that against the liberties and benefits they now had, which they might take for granted.

I don't seem to be able to recall anything else of importance just now.

Q. Was anything said in conclusion as to what would be done, either by Mr. Hathaway or the men?

A. The men thought they would have a meeting after this meeting in Mr. Hathaway's office and decide whether or not they would continue their case of trying to get into the union.

Q. Did you ever talk to the men after that meeting of January 15th and before the one of January 31st? A. I believe so. [286]

Q. Did you have any conversation with him in regard to this desire of theirs to join the union or their further conduct?

A. I can recall a conversation with Mr. Webb, wherein I asked him——

Q. Was Newsom present?

A. No, I don't believe I ever had a conversation with Newsom, not that I can recall.

Q. Up to that time, did you at any time have any or express any opposition to their activities in trying to have the union represent them?

A. No, sir.

Q. Do you think their activity or the activity

(Testimony of Joseph L. Kalins.)

of these men in trying to become a part of the union met with any objections on your part?

A. Absolutely none.

Q. Now, will you state what occurred at this meeting of January 30th, where the station chiefs met and I believe you were present. A. Yes.

Q. Will you state and tell us about that meeting? Who was present and what was said?

A. Mr. Hathaway, Mr. Zitlaw, Mr. Campbell, Mr. Warden and myself were present at this meeting. [287]

We prepared a proposed training plan for our instrument technicians, and after some discussion about the plan, it was unanimously decided that it would be accepted.

Then Mr. Hathaway posed the question how the instrument men were doing. Mr. Warden replied that all of them were doing well considering their experience and training with exception of Mr. Newsom. Mr. Hathaway then said, "We have a problem here, what shall we do with this man?"

Each man in turn, I don't recall the order in which they spoke, but each man in turn gave his idea of what he thought of Newsom's work, and after each man had expressed his opinion it was unanimously decided that the man—well, that is, not right—that we would be better off without him and that he should be removed from the department.

Q. Were his general qualifications, his efficiency and work discussed at that meeting?

(Testimony of Joseph L. Kalins.)

A. Yes, there were various points mentioned. We talked about the defectiveness of his work, the attitude of the man was stressed that it was not conducive toward harmonious relationships with other operating personnel, or the maintenance people——

Q. You say it was unanimously decided the company would be better off without him. Was any decision reached as to what they should do?

A. Yes, it was decided that we would take action immediately. [288]

Q. When you say it was decided, who decided it? Give us the language, if you can, of the person who stated it.

A. I can't remember any particular words or phrases.

Q. Well, in substance, what was said?

\* \* \* \* \*

The Witness: Well, finally, the decision was this by Mr. Hathaway: That the department would be better off without him.

Q. (By Mr. Luce): Did Mr. Hathaway give you any instructions? A. Yes.

Q. Tell us what they were.

A. Mr. Hathaway instructed me to announce to Mr. Newsom on the following day that he would be given two weeks termination of employment.

Q. And what did you do? [289]

A. The next morning I had Mr. Warden bring Mr. Newsom down to Station B, to my office, at which time I read to Mr. Newsom certain notes

(Testimony of Joseph L. Kalins.)

that I had noted down on paper as the reasons for his discharge.

Q. Have you these notes with you?

A. I do happen to have these with me, sir.

Q. Will you produce them, please?

Trial Examiner Myers: You may step down and get them.

Q. (By Mr. Luce): I hand you, Mr. Kalins, some notes on a yellow sheet of paper headed "Newsom Discharge," and I will ask you to state what part of that page did you have before you and did you read from at the time you had the conversation with Newsom on January 31st.

A. Approximately two-thirds.

Q. Well, between what parts?

A. From here to here.

Q. That is from the top to the double line I am now drawing through? A. Yes.

Q. And no part of the second page?

A. No.

Q. Were the words at the top, "Newsom Discharge?"

A. No, that was written in subsequently.

Q. Were the words "Newsom Discharge," and "The Discussion with Newsom and Instrument Technicians, 1-31-51," added later on? [290]

A. Yes.

Q. Will you read now the part of this exhibit, proposed exhibit that you had before you that you read from to Mr. Newsom?

A. I read that we were not satisfied with his

(Testimony of Joseph L. Kalins.)

work as far as the cooperation with his supervisors; the quality of his work; the quantity of his work.

Breaking it down further, (1), does not have ability to get along with supervisors; (2), no desire to become a leadman, to set a pace for the other men or show leadership, does not produce in accordance with ability; (3), producing measured output to just barely get by; (4), unsatisfactory workmanship, sloppiness of work, uncompleted jobs, no dependability; (5), does not fit into department setup.

Q. When you showed that to Mr. Newsom, what did he say?

\* \* \* \* \*

The Witness: He insisted the charges were not real, they were not true, and asked again for certain instances in which his work had fallen down. Once again, he was given some of these instances and finally he said that he would like for me to announce this decision before all the instrument men.

Q. Did he say why he wanted that done?

A. He wanted to put Warden on the carpet before the men. As near as I can remember that was the expression.

Q. What did you say to that?

A. I told him that I would arrange the meeting if I could. I obtained the permission from Mr. Hathaway and we did have a meeting on the fourth floor at Station B.

Q. When was that?

(Testimony of Joseph L. Kalins.)

A. That was the same day, January 31st, 1951.

Q. Will you state what occurred at that time?

A. Well, all the men arrived and I re-read those notes. Actually I didn't read them word for word, I referred to them as I spoke and announced it was my unpleasant duty to state these facts, but something had to be done to improve the departmental standards.

I invited anyone to ask questions or say whatever he thought. Mr. Newsom had a monopoly on the floor that morning and cited many childish instances of reasons why Warden did not like him. Mr. Warden, to his credit, sat by and contained himself while Newsom became rather riled and berated Mr. Warden's supervision.

Mr. O'Brien: I just don't know what to do about this. He has been cautioned several times.

Trial Examiner Myers: Try not to use these conclusions.

Mr. Luce: There might be some objection to the word "childish," but as to whether or not he became excited, that is a fact. [292]

Trial Examiner Myers: I have been trying to get the witness to tell us how he acted.

Mr. Luce: Counsel makes his objections in a rather——

Trial Examiner Myers: I overruled the objection. I think he has a right to say something that can easily be observed.

The Witness: There was not much said by the other men, but Mr. Fowler had the conclusion at



(Testimony of Joseph L. Kalins.)

the meeting and said something to the effect that the men were all together in this thing and that he felt in his own mind that the company possibly were trying to fire Newsom in order to break up their attempt to unionization. That they could, therefore, take it to the National Labor Relations Board.

Q. (By Mr. Luce): What did you say?

A. I told him it was his privilege if he so felt, but that I had done my duty as I saw it.

Q. About how long was it that Newsom criticized Warden and cited instances where he thought Warden was prejudiced against him?

A. I couldn't say, possibly an hour.

Q. Were all of his remarks directed to criticisms of Warden?           A. Practically.

Q. And was anything said at that time by Newsom in regard to what he was going to do?

A. Newsom made a statement that he would take this to the National Labor Relations Board, if for no other reason——

Trial Examiner Myers: When did he say that? Before Fowler made his statement?

The Witness: Yes, it would have been before Fowler made his statement.

Newsom said that he would take the case to the National Labor Relations Board if for no other reason than the nuisance value of it.

Trial Examiner Myers: Did you ask him what he meant by that phrase?

The Witness: No, sir, it was quite clear.

Trial Examiner Myers: In what way?

(Testimony of Joseph L. Kalins.)

The Witness: From what I know about the man's attitude he would do just that.

Q. (By Mr. Luce): What was said at that time about his termination? [294]

\* \* \* \* \*

A. We told Newsom he could transfer to some other department by making the appropriate application with the personnel department, but that his termination, however, in any case, would be in two weeks, which would be February 14th. We told him that he could resign without prejudice or, if he so chose, he would be discharged .

Q. What did he say to that?

A. He did not answer directly whether he would accept resignation, but he said he would tell us on the following day.

Q. Did he say anything about the question of transfer?

A. Apparently, he didn't consider it.

Q. Did he say anything about the question of transfer? A. Not to my knowledge.

Q. Then did he ever communicate with you again in regard to the termination of his employment? A. No, sir.

Q. You had no further conversation with him in respect to his termination?

A. Only on the last day. On February the 14th, in the afternoon, I came into the instrument shop where he was working. I told him that I wished him luck and that some day he would thank me for having terminated his service. That he would probably drive up in a Cadillac some day.

(Testimony of Joseph L. Kalins.)

I asked him what he intended to do, and he advised me he had lots of time and that he would prosecute his case through the National Labor Relations Board. [295]

Q. Was anything further said?

A. I don't recall just now. May I take that back? I do recall one item.

Q. What was that?

A. He assumed——

Trial Examiner Myers: No, not what he assumed. What did he say?

The Witness: He said, "When I come back to the company I won't do anything unless I get direct orders and very specific orders from Mr. Warden himself on just exactly what to do and what not to do."

Q. (By Mr. Luce): When was it that he made that statement?

A. February the 14th in the afternoon.

Q. Was there any change in the instrument technicians, the crew, after Newsom left?

A. We assigned Tony Botwinis to the instrument technicians.

Q. What I mean is was there any change in their efficiency or attitude?

A. Yes, the department as a whole was more capable, was more hard working, more harmonious and all around a much better department.

Q. Since Mr. Newsom left? A. Yes.

Q. From your knowledge of the department

(Testimony of Joseph L. Kalins.)

and of the men, did you attribute that to the fact that Mr. Newsom did leave? [296]

\* \* \* \* \*

JOSEPH L. KALINS

a witness called by and on behalf of the Respondent, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Luce): Between September, 1950, and January, 1951, what was the situation in respect to the instrument technicians in regard to the work they were doing?

A. Well, as I recall, the work load on all of us, the instrument technicians as well as the instrument engineer and efficiency engineer, was considerable and we could not replace any man during that period without suffering some loss in our effectiveness. Nor did we have time to break another man in.

Q. What was the reason for that?

A. That was due to much test work and development work going on as the result of many years' fruition that was more or less concentrated in this period.

Q. Why concentrated in this period?

A. Many of these developments that have since been installed, projects of various nature, were all due—in other words, we had made the necessary arrangements and obtained the authority for these projects which kept myself and Mr. Warden very

(Testimony of Joseph L. Kalins.)

busy getting things ready for their installation, so we could not spend any time breaking in a new man.

Q. Was there anything else that kept your department occupied during that period?

A. Just the fact that we had a new machine with many things to work out. We called them the bugs, and also the failure of Unit 1 which brought about the overhaul of that machine at a time when we didn't particularly wish to work on it, although it was thrust upon us.

Q. Do you mean the burnout? A. Yes.

Q. When that burned out, what was required?

A. Since the entire unit was to be overhauled, very thoroughly, that is, not only the generator and the turbine and the boiler, but all of the other units, the instrument work would have to be very thoroughly overhauled so that it would be a very good operating machine when it came back into service.

Q. How long did the overhaul of Unit No. 1 take? [301]

A. As I recall, possibly——

Trial Examiner Myers: You mean approximately.

The Witness: Yes, approximately from the third week in September until the beginning of January, 1951.

Q. (By Mr. Luce): How long did it take for the overhaul of the instruments on Unit 1?

A. It went on all during that time.

(Testimony of Joseph L. Kalins.)

Q. Was Mr. Newsom's inefficiency discussed with Mr. Hathaway at any time other than this meeting of January 30th?

A. Yes, from the September meeting, and on through to January we discussed it two or three times in Mr. Hathaway's office.

Q. Was there any plan or course outlined or decided upon at these meetings?

Mr. O'Brien: I think I will have to object. I think we should fix the time, place and who was present.

Trial Examiner Myers: I overrule the objection. I will allow the witness to answer. Yes or no?

The Witness: Yes, approximately from the third week of September until the beginning of January, 1951.

Q. (By Mr. Luce): The overhaul of the instruments, how long did that take?

A. It went on all during that time.

Q. Would you say that Mr. Newsom's inefficiency was discussed with Mr. Hathaway at any time other than this meeting of January 30th?

A. Yes, from the September meeting on through to January we discussed it two or three times in Mr. Hathaway's office.

Q. Was there any plan or course outlined or decided upon at these meetings?

Mr. O'Brien: I think I will have to object. I think we should fix the time, place, and who was present.

(Testimony of Joseph L. Kalins.)

Trial Examiner Myers: I will recommend that he do it.

The objection is overruled. Yes or no?

The Witness: Yes.

Q. (By Mr. Luce): Will you tell us what occurred at these meetings?

Trial Examiner Myers: Fix the date.

Q. (By Mr. Luce): Approximately when was this held and who was present?

A. Probably in October——

Trial Examiner Myers: You mean about October?

The Witness: About the month of October——

Q. (By Mr. Luce): Let's take the first one in October. Is that 1950?

A. Yes, that is 1950.

Q. Tell us what occurred at that meeting and who was present.

A. At this meeting, Mr. Hathaway, Mr. Warden and myself were present. We discussed in a very general manner the difficulty involved. We merely procrastinated, we put off the date on which we would take action. [303]

Q. What was said by Mr. Hathaway and the rest of you?

A. Mr. Hathaway asked how Newsom was doing, and Mr. Warden's reply was that he was not satisfied with his work. I don't think I had too much to offer in any of these meetings.

Q. When was the next meeting?

(Testimony of Joseph L. Kalins.)

A. Either in November or December, I can't place it.

Q. Do you recall who was present?

A. Mr. Hathaway, Mr. Warden and myself.

Q. Tell us what was said.

A. Essentially the same as happened at the meeting before. Mr. Hathaway was asking how Newsom was progressing and if he had improved his relationship with the superiors. Mr. Warden again replied in the negative.

Q. Was anything further said by Mr. Hathaway?

A. Mr. Hathaway expressed some concern over the situation.

Trial Examiner Myers: What was said?

The Witness: I can't remember.

Trial Examiner Myers: Of course, you can't remember, but just tell us the sum and substance.

The Witness: Well, he said we should be taking action but that it was up to Mr. Warden and myself. We replied that we were waiting until a more opportune time.

Q. (By Mr. Luce): Did you say why that particular time was not opportune? [304]

A. Simply because our work load was too great.

Trial Examiner Myers: Did you say that?

The Witness: Yes.

Q. (By Mr. Luce): Did you have another meeting before the January 30 meeting with Mr. Hathaway?

A. I can't recall if there were two or three.

Q. Did the instrument men ever speak to you



(Testimony of Joseph L. Kalins.)

about wishing to join the union at any time prior to the January 15th meeting? A. No, sir.

Q. Do you remember at any time saying to any of them that their jobs would be in jeopardy if they continued their union activities?

A. Absolutely not.

Q. Did you say anything similar to that?

A. No, sir.

Q. Did you, yourself, have any reason or did you object to their joining the union? A. No, sir.

Mr. O'Brien: I will have to object.

Trial Examiner Myers: Overruled.

Mr. Luce: You may cross examine.

Trial Examiner Myers: Mr. O'Brien, do you have any questions of this witness?

#### Cross Examination

Q. (By Mr. O'Brien): Mr. Kalins, when you had this first talk with Mr. Newsom on January 31, 1951, you had a yellow sheet of paper in front of you with certain notes on it? A. Yes.

Q. Was that exactly the same sheet of paper you had yesterday? A. The same.

Q. No changes were made on it at all?

A. There were additions noted at the top. Shall I tell you what they are?

Q. I want to know if it is the same sheet.

A. The same sheet.

Q. Did you read that off to Mr. Newsom?

A. Not word for word. I just referred to it as I spoke.

(Testimony of Joseph L. Kalins.)

Q. You didn't read it off the same as you did yesterday? A. No.

Q. When did you prepare that list?

A. I prepared that prior to the time Mr. Warden brought Mr. Newsom to my office.

Q. It was after your talk with Mr. Hathaway?

A. Yes.

Q. Did you consult with anybody in the preparation of that list? A. No, sir. [306]

Q. You heard Mr. Warden testify that Mr. Hathaway met approximately every week with the station chiefs? A. Yes.

Q. Did you regularly attend these meetings?

A. No, sir.

Q. How did you happen to attend the meeting on January 30th?

A. I obtained permission by calling Mr. Hathaway.

Q. When did you obtain that permission?

A. Early that morning.

Q. On the morning of the meeting?

A. Yes.

Q. Did you tell Mr. Hathaway why you wanted to be there? A. Yes.

Q. What did you say to him?

A. I told him I wished to discuss our training program and also to discuss Mr. Newsom.

Q. Had you discussed this training program previously with Mr. Hathaway?

A. Only in very general fashion. I explained the need for it.

(Testimony of Joseph L. Kalins.)

Q. Did you say you saw no need for it?

A. No, I explained the need for it.

Q. On the telephone to Mr. Hathaway?

A. No, at personal sessions from time to time.

Q. What explanation did you give him? [307]

A. The fact that the men were very green and that our equipment at Silver Gate was of such size and complications that the men were not equipped to be able to handle that sort of thing.

Trial Examiner Myers: What men?

The Witness: The instrument men.

Q. (By Mr. O'Brien): Did you outline what the plan would comprise to Mr. Hathaway?

A. When?

Q. In your conference with him on the morning of the 30th.           A. In some detail, yes.

Q. What did you say to him about the plan on the morning of the 30th?

A. We spoke about the type of training it was to be, how often the sessions were to be, and the length of time involved.

Q. What proposals did you make and what did you have to say about it?

A. I proposed that we take each of the types of equipment manufactured basically by Bailey Meter Company, our biggest instrument suppliers, and break them down one at a time and go through the various steps in the understanding of the equipment.

Finally, to the over-all understanding as to how

(Testimony of Joseph L. Kalins.)

the pieces of equipment fit together and trouble-shooting. [308]

Q. Did you say you discussed the possibility of sending some of these men to school?

A. Yes, I tried to obtain permission to do that.

Q. Did you describe the possibility of bringing in the manufacturer's representative or outsiders?

A. No sir.

Q. Did you describe the time when the training would be conducted? Whether it would be on the employee's own time? A. Yes.

Q. What was your proposal?

A. My proposal was to use so much company time as we could spare and then use some over-time in addition.

Q. You made that proposal to Mr. Hathaway?

A. Yes.

Q. At the meeting? A. Yes.

Q. What did he say?

A. He was agreeable to the plan as presented.

Q. Was it Mr. Hathaway's discussion that you present the plan to the station chiefs?

A. Well, sir,—you asked me a slightly difficult question. I can give you the essence of it.

Q. If you would.

A. The reason was the fact that both station chiefs would be present and their ideas would be incorporated in this thing. [309]

Q. Was the plan formulated in detail at this meeting?

(Testimony of Joseph L. Kalins.)

A. Only in general. The actual details were up to Mr. Warden and myself.

Q. Did you and Mr. Warden have authority to hold your men overtime for this training program?

A. Mr. Hathaway gave us that permission.

Q. Did Mr. Hathaway have to consult with anyone else before he gave you that permission?

A. I don't believe he did.

Q. So at this meeting you decided that you would have two days a week training. One hour on the employees' regular working time and one hour overtime? A. That is correct.

Q. That amounted to approximately how much added income for each employee?

A. I don't know.

Q. That would be \$4.00 per week?

A. One hour overtime—it would be about \$5.00 a week.

Q. What was the regular rate for an instrument technician?

A. I believe it is \$1.67½ an hour, which would be \$2.50, and two hours a week would make \$5.00.

Q. About \$5.00 a week?

A. Approximately.

Q. For each employee. [310] A. Yes.

Q. Calling your attention to September, 1950, had you ever had any supervisory job before you got your present position?

A. I was an officer in the United States Air Force for four years.

Q. No industrial supervision?

(Testimony of Joseph L. Kalins.)

A. Yes, I have had some.

Q. Had you ever had occasion to reprimand or discipline an employee before you obtained your present position?

A. In the Army I had that regularly.

Q. I am not talking about the Army. That is something entirely different.

A. In industrial organizations, I don't think so.

Q. Do I understand that shortly after you obtained your present position that Mr. Warden came to you with indefinite complaints about Newsom?

A. Not indefinite. He came to me with very definite complaints.

Q. Whatever they were, you told Mr. Warden "when you get something on him you come to me"?

A. I told him when he reached the point where it was serious enough I would go down and talk with him.

Q. It didn't seem serious enough for you when Mr. Warden presented it that you didn't take any action?

A. Let's say I couldn't afford the time.

Q. Did you tell Mr. Warden you couldn't afford the time?

A. Yes, I had too many other irons in the fire.

Q. So that the next time Mr. Warden comes to you it is about these dirty faces, is that right?

A. That and others.

Q. Well, what did Mr. Warden say—"Now, I have got something"?

A. No, we don't do that to any employee.

(Testimony of Joseph L. Kalins.)

Q. What did he say?

Trial Examiner Myers: The question is, "What did he say"?

The Witness: He said, "I have something I would like to show you about Newsom's work on Unit II."

Q. (By Mr. O'Brien): Then you went and looked at these dials and thermometers——

A. And gauges.

Q. When did you find out that Mr. Newsom, or the men that were working with him, took some screws from the maintenance men's box?

A. At that time.

Q. How did you find that out?

A. Mr. Warden related that to me.

Q. So Mr. Warden had already made an investigation before he brought you down there?

A. That is right.

Q. Was this after regular working hours?

A. No, sir. [312]

Q. Were there any instrument technicians around?

A. There were some working on the boiler panel.

Q. Was Mr. Newsom present?

A. He was on the operating floor at the time, yes.

Q. He was working at some other job?

A. Yes.

Q. When you called this meeting, was that in your office?

A. No, sir, that was in Mr. Warden's office.

(Testimony of Joseph L. Kalins.)

Q. On what date, again?

A. As close as I can remember, September 18, 1950.

Q. That would have been before the overhaul started of Unit I, would it?

A. Yes, it would.

Q. And I think you said your intention in calling this meeting was to get to the bottom of the difficulty, if any?

A. Definitely.

Q. As the meeting progressed, Mr. Newsom defended himself rather vigorously?

A. Very much so.

Q. Is it just possible you might have become a little angered yourself?

A. I became impatient.

Q. You didn't think that Mr. Newsom was showing the right attitude?

A. Definitely not.

Q. All he actually did was explain as vigorously as he could what he had done?

A. Yes.

Q. What do you think he should have done?

A. Shall I tell you what I would have done?

Q. All right.

A. If my boss told me about certain difficulties or certain errors that I had been making, whether I did it or whether he was right or wrong, I would certainly try to improve the quality of my work.

Secondly, I would try to avoid the sort of thing that he mentioned as being wrong.

Q. So if Mr. Newsom had said, "I am sorry. I will try to do better," you would have been happy?

A. No.



(Testimony of Joseph L. Kalins.)

Q. I am trying to get what you expected of Mr. Newsom. You asked him a question, he gives you an answer and you get annoyed at him.

A. No, sir.

Q. What did you expect?

A. I expected certain comments, no doubt; however, I don't expect that in every case he would be right. [314]

\* \* \* \* \*

Q. (By Mr. O'Brien): I think you said it was in January, January 30th, that you received instructions from Mr. Hathaway to discharge Mr. Newsom? A. Yes, that is right.

Q. Did Mr. Hathaway say it would be all right if Mr. Newsom transferred to some other department, at this supervisors' meeting?

A. I believe that is true.

Q. Did Mr. Hathaway tell you that you suggest to Mr. Newsom that he transfer to some other department? A. It was not stressed. [315]

Q. I wondered if it was said.

A. I believe that is true.

Q. What I am getting at is whether the transfer to some other department was Mr. Hathaway's idea or your idea.

A. It was just an idea. That was not my idea. It was an alternative offer at that time.

Q. Aside from your supervising instrument technicians, you have clerks under your supervision, engineering students, do you not?

A. Not at present.

(Testimony of Joseph L. Kalins.)

Q. At that time?

A. I had many departments under me, yes.

Q. In some of these departments would Mr. Newsom's experience and training qualify him for a job or a position?      A. It might have.

Q. Now, assuming that you had a position in some place other than the instrument department, which Mr. Newsom would be qualified by training and experience, would you have taken him?

A. With a proper attitude, I am sure I would have.

Q. You would want to make sure that his attitude changed before you took him?

A. There was no question that he wouldn't accept anything else.

Q. You didn't offer him anything else? [316]

A. No, sir.

Q. And you would have had some hesitation about taking him under your direct supervision?

A. In view of what I experienced, yes.

Q. You say the station chiefs concurred in the unanimous decision to discharge Mr. Newsom?

A. Yes.

Q. The station chiefs have charge of all operations and maintenance at their respective stations, do they not?      A. Yes.

Q. So they would have to approve the transfer of Mr. Newsom to the production or maintenance work at one of these stations?

A. I believe that is correct.

(Testimony of Joseph L. Kalins.)

Q. And Mr. Hathaway is in charge of all the engineering work of the company?

A. Mr. Hathaway is in charge of the electrical production department.

Q. I am not talking about your gas production or your field production. Mr. Hathaway didn't suggest to you that there might be some job for Mr. Newsom in some other department under his supervision? A. No, sir.

Q. I think you said in one of your interviews with Mr. Newsom that you urged him to resign so that he could get his vacation pay? [317]

A. No, sir.

Q. You didn't? A. No, sir.

Q. Did the matter of vacation pay come up in any of your meetings with him?

A. In the January 31st meeting it was explained to him that if he resigned he would be entitled to his vacation pay.

Q. And why would he not be entitled to his vacation pay if he were discharged?

A. That is the company rule.

\* \* \* \* \*

Q. (By Mr. O'Brien): You said you had a conversation or overheard a conversation between Mr. Warden and Mr. Hathaway where Mr. Newsom was discussed? A. Very little.

Q. Did it just come up casually or was it a special meeting about Mr. Newsom?

A. They were not special meetings, no.

(Testimony of Joseph L. Kalins.)

Q. You had other things to discuss and Mr. Newsom's name [318] came up?

A. Mr. Newsom's case was one thing we wanted to discuss.

Q. Did you discuss any of the other instrument technicians? A. There were no complaints.

Q. Did you discuss them?

A. We discussed the progress of some of the men.

Q. That is whether you thought they were making good progress, whether they were weak in some spots and whether they were improving?

A. That is right, we talked about all the men from time to time.

Q. You talked about all the men when you got together? A. That is right.

Q. There wasn't any particular incident that would help you to fix the time of the October conversation? Or the November or December discussion when Mr. Newsom's name came up?

A. I could probably pick them out of the log if I looked.

Q. There was nothing fixed in your mind, nothing outstanding? A. No.

Q. Don't you have a practice of overhauling each turbo-generator unit at least once a year and overhaul all the instruments on it?

A. That is correct.

Q. How much time do you normally allow for an overhaul on one generator turbine?

A. If it is a major overhaul we spend consider-

(Testimony of Joseph L. Kalins.)

able more time. It is the time limitation that determines how thoroughly we work.

Q. That is, an older piece of equipment might take relatively longer?

A. They are all relatively new there at Silver Gate.

Q. Do any of these overhauls occupy less than a month in time? I am talking about the overhaul of just one unit?

A. Will you repeat the question, please?

Q. Has one unit been overhauled in less than one month?

A. I am not sure I know the answer, but that is possible. It is probably true that it has been.

Q. You have three units at Silver Gate and two at Station B?

A. No, sir, Station B has a number of turbines with an entirely different arrangement than at Silver Gate. They are all interwoven and interconnected, whereas at Silver Gate they are all separate.

Q. The thing that disturbs me is how you would be able to complete them all if it took four months to overhaul one unit.

A. That is an unusual situation.

Q. That is because I think you had to send back for parts to Schenectady?

A. No, sir, we had to send for a lot of equipment by air express and anything else to put that generator back in shape. [320]

\* \* \* \* \*

(Testimony of Joseph L. Kalins.)

Redirect Examination

Q. (By Mr. Luce): Counsel inquired of you in regard to Newsom's attitude. Now, did his attitude have something to do with your decision to urge his discharge?

A. Very much so.

Q. What was that attitude? Will you describe it and give instances?

A. Well, basically, it is a defensive attitude. You can hardly show the man where he has done something wrong where he will not have an answer or some excuse. The man was not open to criticism at all.

Q. What was his attitude towards the persons who criticized him?

A. I think he was fairly contemptuous of Mr. Warden.

Q. What did he say in regard to Warden's criticisms in your presence?

A. I could relate something on the January 31st meeting that might point up that thing.

Q. Was that the same kind of a statement he made in September?

A. Possibly somewhat similar, if not to the same extent.

Q. I would rather you tell us what he had done before the January 30th meeting that showed his attitude with respect to Mr. Warden.

A. Well, in the September meeting each of the things that Warden mentioned as the various alle-

(Testimony of Joseph L. Kalins.)

gations, these complaints, in his reply he would—it was just the way his reply was made. He had contempt in his voice and I don't know how else I can say it.

\* \* \* \* \*

CHARLES R. HATHAWAY

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

\* \* \* \* \*

Q. (By Mr. Luce): Mr. Hathaway, what is your present position with the San Diego Gas and Electric Company?

A. Superintendent of electrical production.

Q. How long have you been in the employ of the San Diego Gas and Electric Company?

A. A little more than ten years, about ten and a half years.

Q. Will you tell us what your position was when you started?

A. I started as efficiency engineer about December 1, 1940. I became assistant superintendent in 1946, March of 1946, and superintendent October, 1947. I believe that was December 1, 1947. [323]

Q. And your duties as superintendent of production are what, briefly?

A. They are supervisory. I work with the two station chiefs and efficiency engineer in supervising the operation of the department.

(Testimony of Charles R. Hathaway.)

Q. Now, I will ask you, Mr. Hathaway, what training you had or education before you went to work with the San Diego Gas and Electric Company.

A. I am a mechanical engineer and I had service with the Southern California Edison Company and with the Miami Copper Company before coming to the San Diego Gas and Electric Company.

Q. Will you tell us when you first heard of any complaints against Mr. Newsom and from whom?

A. Complaints were brought to me by Mr. Campbell and the report had come to him from the operators and the men in the maintenance department in the plant.

Q. About when was that?

A. Early in 1950.

Q. Now, Mr. Hathaway, what were the nature of these complaints?

A. He said that the work was not being done as well as it had been done and the men were losing faith in the instruments.

I believe there was some mention of horseplay on the job by the men rather than working on the instruments.

Q. Was anything said at that time about Mr. Newsom or his work? [324]

A. I investigated by calling Mr. Hardway, who was in charge of the instrument men, and he told me that Mr. Webb and Mr. Newsom were working on instruments in Station B.

We discussed the matter and decided to make some changes so that the men would be separated.



(Testimony of Charles R. Hathaway.)

Q. Were the changes made? A. Yes.

Q. When did you next hear any complaints?

A. I spoke to Mr. Hardway several times after that asking him how he was doing. In each case he said he would do all right after discussing the matter with him, but that his work would then become lax and he hoped eventually he would realize the situation and make a good man.

Q. Did anybody complain about Mr. Newsom after he was transferred to Silver Gate?

A. Yes. Mr. Zitlaw, who is station chief at Silver Gate, told me he had several complaints about the work done by Mr. Newsom.

Q. What did you do?

A. I called Mr. Kalins, who was efficiency engineer, and asked him about it and he made an investigation.

Q. Who was this? A. Mr. Kalins?

Q. And that was about when?

A. That was probably several months after Mr. Newsom was transferred to Silver Gate. I don't remember the date. [325]

Q. Now, was any report given to you after Mr. Kalins investigated the matter? A. Yes.

Q. By whom?

A. Mr. Kalins and Mr. Warden.

Q. What did they tell you?

A. They said that—first, I asked him if he had tried different combinations of men as was suggested by Mr. Hardway. He stated that Mr. Webb's work had been on a high plane since the first

(Testimony of Charles R. Hathaway.)

trouble, but that Mr. Newsom had given trouble on every combination.

There has been no doubt as to Mr. Newson's ability, it is just that it is of no value to use unless it is used.

Q. Were there other complaints which came to you after these that you have now described?

A. No others were brought to me except when I asked for them, except as was brought up in our regular meetings.

Q. Aside from the meeting of January 30th, were there complaints brought to you by Mr. Warden and Mr. Kalins?

A. They weren't brought to me except on my request. \* \* \* \* \* [326]

Q. (By Mr. Luce): Will you tell us about the conversation with Mr. Kalins and Mr. Warden? How did they come about and about when they were and who were present?

A. Following Mr. Zitlaw's—you mean, starting at the beginning?

Q. Yes.

A. Following Mr. Campbell's statement to me that there was trouble in the instrument group?

Q. Yes, and following Mr. Zitlaw's complaint.

A. Following Mr. Zitlaw's complaint, I talked to Mr. Kalins and told him I would like to discuss the matter with him and Mr. Warden.

Q. Give us about the date, if you can.

A. I couldn't tell you the date. It was in the period in which Mr. Newsom was at the Silver

(Testimony of Charles R. Hathaway.)

Gate Station and had been there maybe two months.

That would place it around the first of the year, early in the year. I asked Mr. Warden and Mr. Kalins how Mr. Newsom's work was progressing and the answer was it was not too satisfactory.

Each time the matter has been discussed with Mr. Newsom he made an effort to do better work and do more work; however, that lasted only short periods, and following the short period of good he would relapse into a period of not enough work work and not good enough work.

Q. How many times do you think before January 30th you discussed Newsom with Mr. Kalins and Mr. Warden?

A. Probably two, maybe three. My memory is a bit vague on the number of times, but the pattern was quite similar in each case.

Q. That is, practically the same thing was said each time? A. Yes.

Q. Now, you had a meeting on January 15th, did you not, at which the instrument men were present? A. Yes.

Q. Will you tell us the circumstances of that meeting, how it was called and who was present?

A. It was called at my request when I learned that the instrument men were planning on asking for representation by the union, and the meeting was in my office. Those present were Mr. Kalins, Mr. Warden, the instrument group, and Mr. Botwinis, who was working with them.

(Testimony of Charles R. Hathaway.)

Q. Will you tell us what transpired at that meeting?

A. What was that?

Q. Will you tell us what transpired at that meeting?

A. Yes. When the meeting assembled, I asked the instrument men who was the spokesman for the group. There was a moment's hesitation and several spoke and said that no one had been chosen.

I asked them why they desired to join the union and they told me it was to obtain more money. I asked if there was any other reason and they said there was no other reason. In fact, I think I asked the question twice to be sure.

Our operations are based on mutual understanding between the men and the supervisory group, and I felt it was only fair——

Q. We just asked you about the conversation. What occurred at that meeting and what was said?

A. They told me the only reason they wanted to join the union was to obtain more money. I asked them why they had not presented the case to us, Mr. Warden, Mr. Kalins, and to me, and they said they believed they would have a better chance to get the money by going through the union than by going through the supervisors.

I explained that my own personal opinion was that actually their chances would be greater because the union negotiations would not have come up until January or February of 1952, at which time they would be the first to discuss this. I didn't mention this, however.

(Testimony of Charles R. Hathaway.)

I told them as far as I was personally concerned it didn't make much difference whether or not they were in the union because, after all, well over half of the men working for the company belonged to the union.

Trial Examiner Myers: Just keep to the conversation.

The Witness: That was mentioned, however, I said the company might have objections to them joining the union because of the nature of the job, but that that was a question between the company and the union and I didn't have an answer on it.

Q. (By Mr. Luce): What did the men say?

A. I also asked them to think this matter over very carefully and be sure they wanted to join the union before they did so. I also pointed out that there were certain advantages and certain privileges that they now enjoyed which they would not enjoy if they joined the union and operated under a strict contract.

Q. What did they say?

A. They said they wished to think the matter over and would give an answer at that time.

Q. Was that the end of the meeting?

A. As I remember it, yes. [330]

\* \* \* \* \*

Q. Tell us what occurred at the meeting of January 30th.

A. That was a weekly departmental meeting which is usually attended by the station chiefs and me. We frequently call in other members of

(Testimony of Charles R. Hathaway.)

the supervisors and in this case Mr. Warden and Mr. Kalins were present.

Q. Tell us what occurred and what was said.

A. Mr. Kalins and Mr. Warden presented a program for training of the instrument men. They told me the need for this training and the thing was discussed in open meeting from various angles: The time allotted to the meetings, who should be instructors, and what type of instruction should be given. [331]

It was finally decided that the presentation as Mr. Kalins gave it was substantially correct and we would proceed accordingly. It called for two meetings a week, one hour on company time and one hour overtime.

At that time Mr. Newsom's name was mentioned following a question of mine as to how the men were getting along, how they were doing. Each man was given a brief consideration, and Mr. Newsom was reported as not doing satisfactorily.

The question was then raised as to whether or not——

Q. Wait a minute. Tell us what was said about his work and who said it.

A. As I mentioned, I asked about each man in the group and I asked about Mr. Newsom, as to whether or not his work was satisfactory following the occurrences in the past. The answer was that it was not satisfactory and he would probably never become a satisfactory instrument man.

Q. Who said that?

(Testimony of Charles R. Hathaway.)

A. I think I asked Mr. Kalins and Mr. Warden, and they both said that. I asked the opinion of the two station chiefs and they also agreed that he would not become a satisfactory instrument man and should not be in the training course which was about to start. That was also my opinion.

Q. Go ahead and tell us what was said.

A. That is what was said. Each man expressed his opinion that Mr. Newsom was not a satisfactory man and we should not waste his time or the time of the other men or the training instructors in the course. We could not leave him out of the course as an instrument man, and as we had decided something would have to be done about him, we took that action at that time.

Q. Was anything else said?

A. Substantially, that Mr. Newsom would be terminated; that he should be offered the opportunity of transfer, or, in case he didn't choose either—

Q. Will you tell us what was said and who said it? Don't give us your conclusions that it was decided. Tell us what was said and how the meeting terminated.

A. I asked each man, "Should we terminate Newsom?" That was the substance of the question. I asked them individually. The answer was also given, individually, that we should. I concurred with that myself.

I instructed Mr. Kalins to give Mr. Newsom a notice to that effect.

(Testimony of Charles R. Hathaway.)

Q. What was said about transfer at that meeting?

A. I am not sure whether I said it at that meeting or later, but I did mention that he would be eligible for transfer if he so wished.

Q. Have you had any experience under your supervision or within your knowledge of transfers from one department to another in the company?

A. Yes. [333]

Q. Will you give us the procedure and how it is handled and what your experience has been?

A. The procedure is the man who desires transfer usually requests his superior for permission—not permission to transfer, but to obtain the information relative to transfer, to approach the personnel department to obtain the proper blanks for transfer.

Sometimes it is just out of one department for any opening that may appeal to him. Other times it is for a position that is just open. The company policy is to post jobs that are open, and anybody in the company can bid on the job. When a man bids on the job the supervisor in that department reviews all of the names and interviews the men. He chooses the one whom he feels is satisfactory for that job.

I have had a lot of cases in that manner. We have received in this department men who have transferred from other departments and we have also lost men to other departments by transfer.

Q. When you mentioned to Mr. Kalins Mr.



(Testimony of Charles R. Hathaway.)

Newsom should be given the privilege of applying for a transfer, did you at that time entertain any objections to his transferring to any department.

A. No. Mr. Newsom's ability has never been questioned. It is just his application of that ability. We had hoped that by changing the nature of his work that he would be sufficiently interested in it to do a satisfactory job.

Q. If he had applied for a transfer, have you in mind any reason why you would have objected to the transfer?

A. I would have been questioned by the supervisor of the department to which he would have transferred, and I would tell him the truth about his history. This has happened in the past a number of times.

Q. Did you have any objections, as an employee of the company or as an officer of the company, to these instrument men joining the union or designating the union as their negotiating agent?

A. As an individual, who has served as an instrument man, myself, I felt as the men would feel, definitely. As a supervisor in the company, I had no objection at all. However, I did mention that the company had certain reservations because of the nature of the work, but that was not my reaction to the situation.

Q. Did the fact that Mr. Newsom was one of those seeking admission to the union have any

(Testimony of Charles R. Hathaway.)

effect at all on your decision to either allow him to transfer or terminate his employment?

A. It had no effect on the decision except when the union matter was brought up we thought the question might arise.

Trial Examiner Myers: What question?

The Witness: The question of whether it would have anything to do with the action. We discussed it in the meeting and decided to wait until the plans were completed. Then we decided, in all fairness to Newsom and the other members of the instrument group, that we should go ahead as if the union matter had not been brought up, which we did.

Trial Examiner Myers: Did you discuss the question of Mr. Newsom's union activity prior to this meeting of January 30th with anybody connected with management?

The Witness: Prior to that meeting I was **not** acquainted with Mr. Newsom's part in the union negotiations.

Trial Examiner Myers: You knew they had applied?

The Witness: I knew they had applied, but I didn't know who organized it.

Trial Examiner Myers: I am not picking him out, but did you discuss with anyone, prior to this meeting of January 30th, Newsom and the union and what you were going to do with respect to discharging Newsom because of the union question?

(Testimony of Charles R. Hathaway.)

The Witness: I don't remember.

Trial Examiner Myers: I mean, did you talk to anybody at all in management, outside of the division of chiefs?

The Witness: I acquainted my superior with the fact they were seeking union representation.

Trial Examiner Myers: Who is your superior?

The Witness: Mr. Noble.

Trial Examiner Myers: Did you discuss with him that you had in mind discharging Mr. Newsom?

The Witness: Yes, I believe I did.

Trial Examiner Myers: What was that discussion?

The Witness: I told Mr. Noble these men had discussed representation by the union and that one of these men had not been satisfactory as an instrument man; that we had definitely decided that he was not good and would probably ask him to terminate.

I asked him whether I should postpone the action until the end of the union negotiations or whether I should go ahead and act exactly as if the union negotiations had not been brought up.

Trial Examiner Myers: When was this?

The Witness: Sometime between January 15th and January 30th.

Trial Examiner Myers: All right.

Q. (By Mr. Luce): Did Mr. Noble at any time advise you or instruct you to terminate Mr. Newsom's employment?

A. Yes. He said if the man's work was not

(Testimony of Charles R. Hathaway.)

satisfactory, by all means to terminate him. He left the judgment up to the department, however, as to whether he was satisfactory.

Q. And did you refer to his union activity as any reason why he should be terminated?

A. No.

Q. Mr. Hathaway, you say, then, in your department a large portion of the men are members of the union? A. That is correct, yes.

Q. Is there any reason that you know of now, either in company policy or in your policy, that would require you or would cause you to discharge a man because he was engaged in union activity?

A. Certainly not.

Q. To your knowledge, has it ever been done by your company?

A. It has not been done since I have been with the company, certainly not.

Q. Has there ever been any discouragement given to the men to discourage them from joining the union? A. No.

Q. Would you say that in deciding to terminate Mr. Newsom's employment that his union activity was in any degree a contributing factor?

A. No, it was not.

Q. Mr. Hathaway, from your information that you had obtained from your assistants, the station chiefs, Mr. Kalins, Mr. Warden and anyone else, did you form or have an opinion as to whether or not Mr. Newsom was of value to the company, or as to what his value was?

(Testimony of Charles R. Hathaway.)

A. Yes, I formed an opinion.

Q. Would you give us that opinion?

A. My opinion of Mr. Newsom was that he is an intelligent young man and above the average. He has certain capabilities, but that on this particular job he was not applying these abilities and was not doing the work as it should have been done.

\* \* \* \* \*

Q. What has been the report in regard to the efficiency of this particular group of instrument technicians since Mr. Newsom left?

A. I discussed that question with Mr. Kalins some time after Mr. Newsom left the group, and he told me the harmony and the work and everything was a great deal improved.

I also contacted the station chiefs in that matter and received the same answer.

Q. Mr. Hathaway, what would you tell us about the importance of the work of the instrument technicians?

A. Instrument technicians' work is very important in that they control the operations of the nervous system of the production of the electricity for the community. While they don't handle the major equipment, they handle the equipment that is used to determine the proper operation.

The operation itself is automatically controlled, which also does the operating of the largest unit in the system, so it is important that they are properly calibrated and in proper operating order.

(Testimony of Charles R. Hathaway.)

Q. What would you say were the requirements as to the attitude and co-operation of men in that department?

A. An instrument man is more or less in a key position in that he must not only do his work well and keep the instruments in perfect working shape, but must coordinate his effort with the operating men and the maintenance men, as well as the supervisors.

It requires a man of good personality, as well as good technical training. It is definitely a very important position. [340]

\* \* \* \* \*

#### Cross Examination

Q. (By Mr. O'Brien): Mr. Hathaway, you said you had one complaint from Mr. Campbell relative to horseplay at Station B.

A. His one complaint was a collection of various complaints brought to me.

Q. He came to you once?

A. Yes, he came to me once.

Q. But Mr. Campbell didn't tell you who it was?

A. Yes, he said it was instrument technicians.

Q. He didn't mention their names?

A. I am not sure whether he did or not, but the two men involved were Webb and Newsom.

Q. You spoke to Mr. Hardway and Mr. Hardway was the one who said it was Webb and Newsom?

A. Yes.

(Testimony of Charles R. Hathaway.)

Q. Do you know them both?

A. Certainly.

Q. You get around there in your capacity as production superintendent and know all of the instrument technicians? A. Yes.

Q. So when Mr. Campbell said there was horseplay, you didn't have to ask who it was, you knew?

A. I don't know whether I knew. Mr. Hardway separated them.

Q. And there was no further complaint of horseplay by either one?

A. I can't say that there was not.

Q. There were no complaints to you?

A. From Mr. Campbell, no.

Q. Or from anyone else about horseplay?

A. Yes, I think so.

Q. You think so? Tell us what it was.

A. Mr. Zitlaw told me, in consideration of Silver Gate, that not only was the work not being done, but the men were engaging in certain horseplay—Mr. Newsom was.

Q. What horseplay? [342]

A. I didn't go into that. Mr. Zitlaw's opinion is of value to me and I don't have to go into detail.

Q. Mr. Zitlaw's complaint was general, was it?

A. General and specific. The specific part of it was as to the work that wasn't being done.

Q. The specific part of it was that the instrument technician was requested to do work that was no part of his job?

(Testimony of Charles R. Hathaway.)

A. I don't understand.

Q. The instrument technician was asked to do some work by the station chief?

A. That was only a small item.

Q. What was the big item?

A. He wasn't getting the job done.

Q. What part of the job?

A. It was being done so slowly that the work wasn't being accomplished.

Q. How many technicians were there at Silver Gate at that time?

A. I am not sure. I don't know the division of the work at that time.

Q. At the time of Mr. Zitlaw's complaint, did you know where Mr. Warden was?

A. Mr. Warden was in charge of both plants and most of the time at Silver Gate. He was probably at Silver Gate at that time. [343]

Q. So the complaint that the work wasn't being done would apply to the entire force, wouldn't it?

A. No, because it was specifically mentioned that Mr. Newsom was not doing his part of the work.

Q. How did the station chief know which part of the work that Mr. Newsom was doing?

A. The station chief has a pretty good idea of what is going on in his plant.

Q. You got one complaint from Mr. Campbell?

A. Yes.

Q. Only one?

A. One covering a lot of items.



(Testimony of Charles R. Hathaway.)

Q. And you took that up with Mr. Kalins?

A. Mr. Hardway.

Q. And Mr. Kalins reported back to you that after he talked with Mr. Newsom his work improved?

A. Mr. Hardway, you are referring to.

Q. As I understand it, Mr. Zitlaw complained to you——

A. You said Mr. Campbell's complaint before.

Q. I am sorry, I meant Mr. Zitlaw's complaint.

A. Then, it was Mr. Kalins in that case.

Q. Then, the other matters, when Mr. Kalins and Mr. Warden reported that Mr. Newsom wasn't doing everything they expected of him, came up just casually in your conversations?

A. In what conversations? [344]

Q. I think you said the only time there was any complaint about Mr. Newsom's work was when you asked specifically about it?

A. I didn't ask for Mr. Zitlaw's complaint.

Q. Yes, you had one from Mr. Zitlaw and one from Mr. Campbell? A. Yes.

Q. You said there were some other remarks about Newsom's work that had been solicited by you? A. Yes.

Q. Did you consult with Mr. Noble before you called this meeting on the 15th?

A. Yes, I did. Not before I called the meeting, but before the meeting was called.

Q. Did you receive any instructions from Mr. Noble? A. Yes.

(Testimony of Charles R. Hathaway.)

Q. What were they?

A. He said the company might have certain reservations concerning the instrument men becoming members of the union.

He didn't tell me what they were, and that was about the extent of it.

Q. Mr. Noble formerly held the position you now hold? A. Yes.

Q. What is his present title?

A. General superintendent.

Q. In charge of— [345]

A. All operating divisions of the company.

Q. And you have to work pretty closely with him in your job? A. Reasonably so.

Q. And he has on occasions expressed his opinion of unions? A. Surely.

Q. Would you care to state what his opinion is in reference to unions?

A. I wouldn't venture to know what his opinion of the union would be.

Q. You say it was sometime between January 15th and January 30th that you obtained Mr. Noble's permission to discharge Mr. Newsom?

A. Yes.

Q. And you say there has never been any question of Newsom's ability?

A. I believe the general acceptance is that he has the ability.

Q. Is it possible that his supervisors may have held him to a higher standard of performance than some of the other technicians?

(Testimony of Charles R. Hathaway.)

A. I doubt that. In fact, the other might be the case. I think they leaned over backwards to give the man a chance.

Q. Do you have any positions in your organization, I mean in the electrical production division, outside of the instrument department, that Mr. Newsom would be qualified to fill? [346]

A. That is hard to say because positions of that nature are fairly few and would be filled.

Q. At least at the time the decision was made to terminate Newsom you had no other vacancies under your supervision?

A. No, not on the same level. The only other opening would be to return to a helper's status.

Q. You didn't consider giving him a job with greater responsibility?

A. We didn't have one open at that time.

Q. You had made inquiry to find out if there was an opening in any other department of the company that was not under you?

A. No, I hadn't. However, if that had come up, I would have done so.

Q. So all your suggestions to Mr. Kalins relative to Mr. Newsom's transfer meant that if he could find a supervisor willing to take him you would not stand in his way; you would not say, "You can't have that man?"

A. It would be a matter of not standing in his way, but I would tell the truth.

Q. You would make a full disclosure and state that the man had a great deal of ability?

(Testimony of Charles R. Hathaway.)

A. Right, but that he had not applied it in our job.

Q. And that he could do fine work?

A. I don't know how fine work he could do but he did have the technical ability.

Q. And the only reason you didn't want him was because of his attitude?

A. Because of his attitude and because he didn't show enough interest in the work to do the work.

\* \* \* \* \*

### KENNETH CAMPBELL

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

#### Direct Examination

\* \* \* \* \*

Q. (By Mr. Luce): Will you state what your present position is with the San Diego Gas & Electric Company?

A. Station chief at Station B.

Q. How long have you been station chief?

A. Since September 1, 1945. [349]

Q. Will you tell us, please, what is your experience and background prior to your becoming employed by the San Diego Gas & Electric Company?

A. I had approximately 12 years' experience in maintenance and operation of steam-electric stations. That included all phases of operating work, maintenance work and instrumentation.

Q. By what companies?

A. The Central Arizona Light and Power Com-

(Testimony of Kenneth Campbell.)

pany in Phoenix and the Phelps-Dodge Company in Ajo, Arizona.

Q. When you first entered the employ of the San Diego Gas & Electric Company, in what capacity was it? A. Engineering assistant.

Q. What did that consist of?

A. Assisting the master mechanic in charge of maintenance and operation of Station B.

Q. How long did you occupy that position?

A. From April 27, 1942, until September 1, 1945.

Q. And then what position did you take?

A. My present position, which is station chief at Station B.

Q. State generally what your duties are at Station B.

A. I have the general supervision of all maintenance and operation of that station. That includes all operating men and all mechanical maintenance men, the maintenance electricians, storeroom men, guards, janitors, screen tenders, and condenser cleaners. [350]

\* \* \* \* \*

Q. What do you do upon termination of employment in regard to interviews with the person involved?

A. We try to interview each man before he leaves the job, regardless of the type of termination; whether he leaves of his own accord or by request, we try to have an interview with him to

(Testimony of Kenneth Campbell.)

get his reaction as to the job and to help us in planning our work to do a better job.

Q. You had an interview with Mr. Newsom at the time of his termination? A. Yes, I did.

Q. And how long did that last?

A. Between two and three hours. I don't know exactly how long.

Q. When did you first become acquainted with Mr. Newsom?

A. At the time of his employment or during the interview prior to that, I believe. That is not a positive recollection, but I believe that was the time. That was March, 1948, I believe. [351]

Q. Did he start in at Station B?

A. He started there as a helper in the maintenance crew under my supervision.

Q. Did you observe his work from there on up until the time of his discharge?

A. Indirectly, until he transferred into the test department in I believe, October, 1948, at which time he had just completed the probationary period of employment, which is six months for every employee, and I recommended him to the test department for the job which they had in prospect.

Q. Did you observe his work after he entered the test department?

A. Only occasionally. I necessarily observed him at intervals and, having had him in our department, I was interested.

Q. Did he do the test work at Station B?

A. Yes, he did. How extensive, I don't know,

(Testimony of Kenneth Campbell.)

but he did the test work and he did the training of at least one other man.

Q. Now, will you state when your first knowledge was of any criticisms or trouble with respect to Mr. Newsom's work occurred?

A. It was in 1950, sometime prior to May. I don't know the exact date, but over a period of several weeks we had repeated complaints from the operating men, through their supervision, in regard to the ineffective manner in which the control equipment was being maintained. [352]

Q. What was done about that?

A. We discussed it at intervals with the efficiency engineer, Mr. Hardway, at that time, and no specific complaints were made.

We did turn in work orders or work requests that instrument work was to be done. In many instances that work was not done satisfactorily.

Q. Whose work?

A. The test department's work.

Q. What did Newsom have to do with it?

A. He was at that time instrument technician at Station B and he was therefore making the principal repairs to control equipment.

Q. Did you ever discuss with Newsom his work or the criticisms of his work?

A. With Mr. Newsom?

Q. Yes.

A. That was not my responsibility; he was under another supervisor.

Q. What else did you observe about his work?

(Testimony of Kenneth Campbell.)

A. His general attitude towards the job was the primary concern which I had.

Q. State what that was.

A. A tendency of having too much time on his hands during the period when he was breaking in Mr. Webb prior to and possibly during May, 1950. I frequently found them in a state of inactivity at the time I was making the rounds through the plant, and, apparently, with no definite objective ahead of them when I knew there was work to be done.

We had one specific complaint of horseplay which was called to my attention by the storeroom men, which I reported to Mr. Hardway, and this particular——

Trial Examiner Myers: When did you report it?

The Witness: Immediately after the condition was called to my attention.

Trial Examiner Myers: I mean, could you fix the month?

The Witness: It must have been the early part of May, 1950.

Trial Examiner Myers: You mean, approximately May, 1950?

The Witness: Yes, sometime prior to May 18th, because on that day Mr. Hardway had a conference with Mr. Newsom.

Q. (By Mr. Luce): Go ahead and state any other things you observed.

A. This particular case of horseplay was at the storeroom window. It involved a note which had



(Testimony of Kenneth Campbell.)

been placed on the storeroom which inferred some reflection on the storeroom men, to which they took exception. I investigated that problem personally and found that Mr. Newsom did not write the note which caused the trouble, but apparently he was enjoying the effects of it at the expense of the storeroom men.

His general attitude in the plant was one of listlessness during my observations. [354]

Q. How long did that continue?

A. Over a period of several weeks prior to May, 1950.

Q. After May, 1950, what happened?

A. I frequently inquired as to how Mr. Newsom and Mr. Webb were both getting along inasmuch as I had recommended both of them. I thought they were both capable boys and I wanted to see them make good. My answers to these inquiries were made to the efficiency engineer, Mr. Hardway, later on Mr. Kalins, and to Mr. Warden. The answers to these inquiries were that his work was spasmodic. It would be good for a while and then poor.

Q. Now, after May, 1950, was Mr. Newsom working at Station B at any time?

A. Some of the time. Exactly how much, I don't know.

Q. But most of the time he was at Silver Gate?

A. I am not in a position to say.

Q. He was in Station B?

(Testimony of Kenneth Campbell.)

A. I don't know how long he was at Station B after May, 1950.

Q. What portion of the time, could you tell us?

A. I wasn't familiar with his schedule and therefore only saw him at intervals in making my rounds through the plants. I didn't have knowledge of his actual assignments.

Q. Now, were you present at the meeting on January 30th in Mr. Hathaway's office?

A. Yes, I was. [355]

Q. Will you state what occurred at that meeting?

A. That was a meeting of the station chiefs and the department superintendents. During that meeting our work was interrupted, at which time Mr. Kalins and Mr. Warden came up to present a program, a request for a program on training of instrument men.

There was a general discussion of the values of the program and some discussion of the details of handling it. It was decided that the program would be put into effect, and after that was decided there was a question in regard to how the instrument men were getting along.

At this time it was reported by either Mr. Warden or Mr. Kalins, I am not sure which, that his work was still not satisfactory. There was a general discussion as to what should be done with him, and each man in the group had an opportunity to express his views, based upon his experience and judgment. It was decided that for the good

(Testimony of Kenneth Campbell.)

of the entire department it was better if Mr. Newsom would be terminated.

Q. Did you express your opinion at that meeting?  
A. I did.

Q. Will you tell us what you said?

A. I can't tell you exactly, but my opinion was that due to his inability to adjust himself to the conditions of the job, that he should be terminated from that department.

Q. Now, were you actuated in giving that opinion by the fact that Newsom had been involved in union activity? Would that affect you in any way in the termination of any man, whether he had been in union activity or not?

A. Not in the least.

Q. Did you have union men working under you?

A. Almost all the men are union men. We have exceptionally good relations with them.

Q. You have no objections to union men?

A. Not at all. I have been a member myself.

Q. Now, in regard to the transfer of a man from one department to another, did you hear anybody say that Newsom would be given the privilege of applying for a transfer?

A. I am not sure that during this meeting that was discussed, that is, while Mr. Kalins and Mr. Warden were present. It was discussed in connection with his possible termination. It is the practice and policy to try to place a man some place to the advantage of the company and to that man.

(Testimony of Kenneth Campbell.)

Q. You have known of instances of men applying for it and obtaining a transfer from one department to another?

A. We have carried men for as long as 18 months when, in fact, they were not fulfilling the requirements on our job.

For instance, after 18 months he took a better paying job in the plant construction department. In another instance we carried a man for several months, I don't know how long, and arranged a transfer for him into the transportation department [357] at a better paying job.

We have transferred a number of men to other departments who were not able to make the grade in our department.

Q. Were there any objections on your part or on any else's, as far as you know, to Mr. Newsom being transferred from the technician instrument division to some other department or division of the company?

A. Not to my knowledge.

Trial Examiner Myers: Assuming that Newsom couldn't be transferred to another department for reasons of there being no job available, how long would he have been carried in that instrument department?

\* \* \* \* \*

The Witness: Possibly for a few weeks. That would have been contingent on his attitude. [358]

\* \* \* \* \*

(Testimony of Kenneth Campbell.)

Cross Examination

Q. (By Mr. O'Brien): Did you have any position for Mr. Newsom under you?

A. I beg your pardon?

Q. Did you have any position for Mr. Newsom under your supervision on January 30th?

A. We did not.

Q. You don't recall any discussion at that meeting on the 30th of where he might transfer?

A. I don't believe a specific department was mentioned.

\* \* \* \* \*

Q. You knew him as a capable man?

A. Yes.

Q. You say you saw no difficulty with his work at all until [359] around May, 1950?

A. That was the first time it came to my specific attention.

Q. And he had been working at different periods under you for two years?

A. I had not made a specific inquiry until after May 18th. There was a discussion following my report to his supervisor and then I did check up more closely after that.

Q. And the answer you received from the instrument engineer was that Mr. Newsom's work was spasmodic? A. That is right.

Q. I think you said you observed a general listlessness. When was that?

A. During the weeks prior to May 18th.

(Testimony of Kenneth Campbell.)

Q. Of 1950? A. Yes.

Q. That is late April and early May?

A. Possibly during that period. I made no record of that time. These men were not directly under my supervision and I wasn't interested in them only by the fact they had at one time worked under me, which was my responsibility, and for their own good.

Q. Was that when you made your complaint to Mr. Hardway?

A. Yes, it was in connection with the report I had from the storeroom.

Q. I think you said Mr. Newsom was teaching Mr. Webb his job [360] at Station B?

A. I understood he was breaking in Mr. Webb in that time.

Q. So anytime that you saw that they weren't working, isn't it possible that Mr. Newsom was instructing Mr. Webb?

A. Some of that time would be occupied in instruction work, I realize that.

\* \* \* \* \*

Q. From your job as station chief, if some particular instrument required immediate attention, what procedure did you follow?

A. In the absence of the instrument engineer, if it was an emergency, we go directly to the man in charge of the job. That is the instrument technician. We go to him and ask him to assist in taking care of this immediate job.

(Testimony of Kenneth Campbell.)

Q. Did such an emergency ever occur when Mr. Newsom was at Station B?

A. I don't know of any such instance.

Q. You know of no occasion when he refused such assistance? A. No.

Q. When there are cases where there is a little bit of doubt as to an instrument and when you would like to have it taken care of, but it is not an emergency—— [361] A. Yes.

Q. ——what is the procedure on that?

A. It is usually handled through the regular channels in that department.

Q. That is, the operator expresses it to you, you send it to Mr. Warden and he assigns that work?

A. That is the general pattern. However, there is a short circuit in that from notes made in the log. The log maintained by the operators is picked up directly from the log, I believe, by the instrument men and repairs made without getting a specific order from Mr. Warden.

Q. There are some instruments that record 24 hours a day. You take out one piece of paper and you put in another, is that true? A. Yes.

Q. It is the job of the instrument technician to remove that record?

A. In most cases it is the job of the operator.

Q. The operator takes a look at the record and puts a note on it for the instrument technician?

A. That is right.

Q. If the instrument technician sees something

(Testimony of Kenneth Campbell.)

on it he will talk to the operator and he will take care of it immediately?

A. That is right.

Q. If there is something neither one of them understands, the instrument technician will put a note on it, calling it to the attention of Mr. Warden so they can get together and figure out the trouble? A. I believe that is right.

Q. In any of these phases of his duties did Mr. Newsom fall down?

A. In the general maintenance of boiler controls, specifically, work was not done completely. I can't say a specific case. I can't point to a specific instance, but I know we had reports from our operators, and if it had been done, we would not have had the reports.

Q. You can't tell us in what way it was not done completely? I have given you a couple of examples, now you give me one.

A. For instance, at minimum loads on the boilers we have to drop down to quite low loads during certain periods of the day. We had had trouble with air controls, automatic controls on the boilers, which I know continued over a period of several days without proper correction. I don't recall other specific instances.

It was in a general manner in which these reports came in through shift supervisors from their firemen.

Q. This matter of air controls, that may have been something which Mr. Newsom could take care



(Testimony of Kenneth Campbell.)

of immediately or it might have been something that needed to come before Mr. Warden?

A. In some cases it might have been possible. It might have [363] been the case.

Q. From your standpoint, the work was a little bit slow?

A. The work was not a little bit slow, it was not maintained.

Q. Your complaint to Mr. Hathaway was specific of Mr. Newsom, but of the department in general?

A. It involved Mr. Newsom's attitude.

Q. We keep coming back to his attitude.

A. Work output and the qualifications are minor considerations in the adjustment of any employee.

Q. So far as you know, did he ever refuse to obey an order? A. Not to my knowledge.

Q. Did he follow all the instructions that you gave him?

A. I don't believe I gave him specific instructions. He was under my general supervision.

Q. Can you tell us just what Mr. Hathaway said relative to Mr. Newsom on January 30th?

A. I can't tell you the exact words.

Q. I realize that. Everyone has his own recollection; I would like to have yours.

A. The summary, as I recall, by Mr. Hathaway was to the effect that it looked as if we should terminate Mr. Newsom, and he so instructed Mr. Kalins to carry out that decision.

Q. Did he address the question directly to you?

A. In regard to my opinion?

(Testimony of Kenneth Campbell.)

Q. Yes. [364]           A. He did.

Q. What was his question to you?

A. It was my opinion as to what should be done in the case of Mr. Newsom, considering everything of general knowledge we knew about him.

Q. What was your answer?

A. It was to the effect that for the advantage of the job—

Q. That is something you may be able to remember, in your own language, or to reconstruct it.

A. Unfortunately, I cannot remember the exact words.

Q. Well, to the best of your recollection, sir?

A. It was to the effect that for the good of the entire department I felt he should be terminated.

Mr. O'Brien: That is all.

Q. (By Trial Examiner Myers): What was said, if anything, about the instrument men? What was said at the January 30th meeting about the instrument men organizing and the request of the union to represent them?

A. There was a general discussion of that as to how it affected the termination of Mr. Newsom in connection with that problem.

Q. Who entered into the discussion?

A. I believe it was general discussion.

Q. Did you take part?           A. Yes, I did.

Q. What did you say?

A. My opinion was that regardless of the union activity at the time if we had a problem which

(Testimony of Kenneth Campbell.)

needed to be handled we still have to run or business.

Q. When was that discussed, before or after the question of final determination to terminate Newsom?

A. It must have been during that discussion, exactly what part I don't know.

Q. Who brought up the question?

A. I couldn't say. We knew there would be a problem there. We knew that we probably would be charged in that manner. We still have to face the problem of our job.

Q. It was the consensus of opinion to proceed against Mr. Newsom despite the union?

A. That is right.

Q. When did you first hear about the instrument men wanting to organize?

A. I don't know, definitely. It was, possibly, some time after their meeting with Mr. Hathaway on January 15th.

Q. Was it before the January 30th meeting?

A. Yes, before January 30th. [366]

\* \* \* \* \*

WALTER S. ZITLAW

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

\* \* \* \* \*

Q. (By Mr. Luce): What is your present posi-

(Testimony of Walter S. Zitlaw.)

tion with the San Diego Gas & Electric Company?

A. Station chief at Silver Gate.

Q. How long have you been station chief?

A. Since about March, 1943.

Q. And were you employed by the company prior to that time?

A. Yes, I entered the company's employ July, 1941.

Q. In what capacity?

A. Engineering assistant.

Q. Prior to employment by the San Diego Gas & Electric Company, had you had prior experience?

A. I was employed by the Phelps-Dodge Company in a similar capacity.

Q. For how long?      A. Eight years.

Q. Will you tell us when you first became acquainted with Mr. Newsom?

A. My first acquaintance with Mr. Newsom has completely passed my memory, but it was at the time of his first employment. I noted him as an applicant, and I had no contact with him until sometime in 1949.

Q. At that time what work was Mr. Newsom doing?

A. At that time, March or April, it is my recollection that he was brought to the Silver Gate Station to work with the instrument technicians in the care and maintenance of the instruments at Silver Gate.

Q. From the time he came to the station in 1949

(Testimony of Walter S. Zitlaw.)

until the time of his termination, did you have occasion to observe his work?

A. Yes, as station chief I observed the actions of all departments within the station and I observed his work rather closely at times, and in general all the time.

Q. Will you tell us in your own way what you observed in regard to his work from the time he first came to Silver Gate Station until his termination?

A. My first recollection of Mr. Newsom, early in 1949, was a very favorable memory. He put out considerable effort. He seemed to be very interested in the work, and he was very co-operative in any of the various problems that arose at the station.

As time passed on he became lax in his duties and I received numerous complaints from the operators, and even complaints from the maintenance forces concerning his lack of attention to the duties.

His place of work, that is, his office, the place where he could be found most of the time, was immediately across the hall from the office and I noted that he spent a great deal of time there rather than at the scene of the work. [369]

\* \* \* \* \*

Q. Did you ever talk to Newsom about his work?

A. No, I felt that was not my responsibility to talk to him personally. However, I mentioned the condition to Mr. Warden on several occasions when

(Testimony of Walter S. Zitlaw.)

specific things were brought to my attention. These things were, sometimes, in themselves of very small magnitude. Sometimes they amounted to a great deal. I remember none of them in particular because I made no good or mental note of them.

Q. How did his work progress? Did it improve or not?

A. No, after the laxity, again it continued that way until they moved him away from Silver Gate. They probably considered him a thorn in the flesh so they took him back to Station B.

Q. Just when? Do you recall?

A. I do not recall. When they took him back to Station B, it was the latter part of '49.

Q. Well, what was the nature of the complaints that came to you while he was at Silver Gate?

A. His failure to take care of the various things set before him in the nature of problems. The operators at each station maintain a log in which are kept a written note of anything that is wrong. Mr. Newsom would pick these things up, or they would be handed to him by his superior to take care of. More than once he passed them by, apparently intending to do them, or they were never completed.

The firemen at the boiler stations were particularly distressed because of the fact that the controls were not being taken care of and minor adjustments were not being made as requested in the log.

Q. Over what period of time did you really observe his work?

(Testimony of Walter S. Zitlaw.)

A. From early in 1949 until the latter part or middle of 1949. I don't recall how many months were involved. Between the time he left Station B and was returned to Silver Gate late in '50, and from that time until the completion of the No. 1 overhaul I had an opportunity to observe him again very closely.

Q. What was your opinion of his work at that time?

A. From the early part of September until November I took very little note of what he was doing or just what was being handled by Mr. Newsom because my particular affairs were pressing me to the hilt. I took no particular note of what he was doing until about the middle of November when I wanted to take a complete stock of the situation at Silver Gate. I inquired into the work of the instrument department to find out what was being done in the overhaul of the instruments and the controls of Unit No. 1.

I found that the responsibility had been delegated to Mr. Newsom and that he was proceeding with that. At that time a sufficient time had passed in my opinion that the work should have been completed, but I learned that he had other duties to perform, also, and I took no further note of it other than to watch from that time on to see how we were proceeding.

I noted that he had help. Though he had a considerable amount of work to do, very little of it was actually being executed and this distressed

(Testimony of Walter S. Zitlaw.)

me quite a bit because we were having our troubles trying to get this unit repaired and ready for service.

Again I called this to the attention of Mr. Hathaway that this work was lagging behind. I also called it to Mr. Warden's attention, at which time Mr. Warden was actually engaged most seriously on the combustion tests of No. 5, the new boiler.

Q. Did anything happen after that?

A. No. Unfortunately I found no improvement in the condition.

\* \* \* \* \*

Trial Examiner Myers: Go ahead and explain it.

The Witness: As we approached the end of December I noted that this work was still not being completed and I raised considerable question. At that time it was necessary to put additional help on, under the direction of Mr. Warden, to get the job completed and ready for operation right after [372] the first of the year.

Q. (By Mr. Luce): Now, from your observation of Mr. Newsom during the period you have outlined, what was your opinion in regard to the efficiency and quality of his work?

A. He has exceptional ability when it is work to his interest. If he finds interest in the work, he can do a good job and he can do it with dispatch. The work we have is not the type of work that will hold his interest over any period of time, and he doesn't fit that picture at all.

Q. Why?



(Testimony of Walter S. Zitlaw.)

A. I really don't know. I am not a psychologist, I suppose it is his temperament and attitude towards the job. He doesn't seem to accept the job for what it is.

Q. In what way?

A. Because of the failure to continue to prosecute each assignment that was his, each responsibility that was his. He would let them go by for lesser things or for just laughs, doing nothing.

Q. Now, Mr. Zitlaw, you were present, were you not, at the meeting in Mr. Hathaway's office on January 30th?      A. Yes, I was.

Q. Will you tell us what you remember of the meeting and the conversations?

A. The meeting was the regular meeting held by the superintendent with the two station chiefs to discuss whatever problems might be before us at that particular time.

This particular meeting, Mr. Kalins and Mr. Warden were present because they had a problem to present to us covering the training program for the technicians and the men of the instrument group. They gave us a brief outline of the plan and asked our opinions and ideas, which we probably gave, I don't recall any details on that.

In the course of our discussion we discussed how this plan would be carried out, at what time and hours the work would be done and the training program worked in, and we finally came to the point of discussing the individuals who would be involved.

(Testimony of Walter S. Zitlaw.)

I believe Mr. Hathaway—in fact, I am sure it was Mr. Hathaway, asked concerning the conditions under which the men were found at that time. His wording was, “How are they doing?” or “How are they getting along?” Either Mr. Kalins or Mr. Warden, I don’t remember which, explained the situation of each individual, and Mr. Newsom’s case was presented as being very unfavorable and his work not being satisfactory.

Q. Go ahead.

A. At that particular point Mr. Hathaway posed the question, “What are you going to do about this particular man?” I don’t recall who opened the discussion on what to do about this thing, but it went around to all of us, myself included, and it was our unanimous decision that the best thing to do for the department, and for the man himself, was to terminate him.

Q. Do you remember what you said at that meeting?

A. Only in substance, but I concurred with the idea, because I had observed the man on two different occasions, both over a considerable period of time, and it was my firm opinion he was entirely misplaced; that there was no help that we could give him which would be constructive and save him for the job at hand. [375]

\* \* \* \* \*

Trial Examiner Myers: Go ahead.

The Witness: That was the decision that was reached and I concurred with it because I felt

(Testimony of Walter S. Zitlaw.)

that was the best thing to do, to terminate the man.

At that time Mr. Hathaway delegated the responsibility to Mr. Newsom's superior, Mr. Kalins, to terminate him from his work.

Q. (By Mr. Luce): Did the activity of Mr. Newsom towards becoming a member of the union or having the union speak for this group of instrument technicians have any effect at all upon your decision or your statement that he should be terminated?

A. No, sir, that was no part of the consideration at all.

Q. Have you any prejudices at all against the union or anybody joining the union?

A. I certainly do not have.

Q. Would you have any objections or interfere in any way with Newsom or the instrument men joining the union?

A. I would not stand in their way.

Q. That didn't play any part at all in your decision? A. No.

Mr. Luce: That is all. [376]

\* \* \* \* \*

### Cross Examination

Q. (By Mr. O'Brien): When did you first notice the change in Mr. Newsom's attitude?

A. In 1949, shortly after his arrival at Silver Gate and he became thoroughly saturated with what was about him. I noted the change coming about by personal observation.

(Testimony of Walter S. Zitlaw.)

Q. Was that within a week or two?

A. No, I would say a month or possibly four or six weeks. He was very effective in his application for the first three or four weeks there.

Q. During March and April he made an excellent impression?

A. Yes, those are the months that I recall to my mind.

Q. Then was it in March that he started spending a great deal of time in his office?

A. It was either in March, April or May. I would stand corrected on those because I don't know them exactly.

Q. Was there any other instrument technicians at Silver Gate at that time?

A. I believe not. Mr. Warden spent a portion of his time there. He was always there in the mornings and occasionally returned during the day and spent a great deal of his time with Mr. Newsom.

Q. When you had observed him had he been on the job long enough to learn all the intricacies of it?

A. He was pretty well trained, yes. He had been on the job long enough to take care of the details that were his to take care of.

Q. Was he familiar enough with the Silver Gate Station to take care of it?

A. Yes, familiar enough with it to take care of the work. He wasn't familiar enough with it to take care of the combustion tests, no, but on the

(Testimony of Walter S. Zitlaw.)

routine instruments and gauges he was very competent.

Q. He had quite a bit of office work?

A. No, I don't believe so. I believe the total amount of his office work could be embraced in one and one-half hours. I asked what records they were keeping and Mr. Warden showed me the records which were kept, because at that time I was not aware of it at all.

Q. So your opinion is based on casual conversation?

A. I made an issue to contact him because of the situation I had observed.

Q. You don't know what other work he may have had in his office besides keeping records?

A. No.

Q. He might have been calibrating instruments?

A. I am not sure, but I am sure he was not calibrating instruments.

Q. He might have been studying some books?

A. It is very unlikely. There were no books available at that time and I could recognize that at a glance.

Q. What were you doing while you were watching him?

A. I pass by the door frequently. I was in and out of my office, to and from the job.

Q. It might have been a coincidence that he happened to be in there when you passed by?

A. A very odd coincidence.

(Testimony of Walter S. Zitlaw.)

Q. You said you spoke to Mr. Warden on several occasions?

A. That is correct. Some amounted to small instances and some that amounted to a great deal.

Q. Tell us about "a great deal."

A. I am not going to be able to specifically state any one of them for I did not make a written record of it. They were brought to me by the operators and the shift supervisors. The recollection I have of one that was particularly disturbing was the situation of the differential gauges on the traveling screens which have to do with the alarming in case of high differential screens and also the starting of the screens automatically, in which case the device was not made operative and no correction made on them to get them in an operative condition.

Q. Do you know if he had received instructions to do that?

A. It had been entered into the log.

Q. The operating department enters it in the operating log?

A. That is correct.

Q. And you don't know whether Mr. Newsom took that up with Mr. Warden or not?

A. He would not have to. He would assume that immediately upon inspection as the job at hand.

Q. Do you know whether it was within his ability?

A. Oh, yes.

Q. Do you know if he ultimately corrected the settings?

A. Unfortunately not. Mr. Warden had to make it his personal business to take care of that particular job.

(Testimony of Walter S. Zitlaw.)

Q. Did that interfere with the operation of the plant in any way?

A. No, but it interfered with the security.

Q. To what extent?

A. To the extent that if the traveling screens became plugged the condensor would be without circulating water.

Q. I see what you are talking about. Your exhaust steam goes to a tidewater basin?

A. Certainly.

Q. Where it is condensed into water and is used again?

A. It goes into a condensor, yes.

Q. And then there is ocean water coming in, circulating around these?

A. That is right.

Q. And there is a screen—first of all, there is some baffle that acts as a trash catcher? [380]

A. That is right, a trash vent.

Q. Then you have a porous screen to catch this semi-dissolved or catch small pieces of sediment?

A. That's right.

Q. And in the event of that screen becoming clogged would be that the condensers would not work quite as well?

A. We have had experiences where it would not work at all.

Q. It is the job of the instrument technician to take care of the screen?

A. It is his job to take care of the instruments

(Testimony of Walter S. Zitlaw.)

so that in the event the differential across the screen becomes excessive, we would be notified by the alarm.

Q. The screen was working?

A. Yes.

Q. It works only intermittently, it doesn't work continuously? A. Yes.

Q. It is no failure of Mr. Newsom to do anything that interfered with the operation of that screen in any way?

A. The automatic controls and the alarming of the differential, yes.

Q. Doesn't the water still continue to go through? A. On a clogged screen? No.

Q. And did the screen get plugged? That was my next question. [381]

A. We have had screens plugged, yes.

Q. But not on that occasion?

A. On this occasion, no, I could not say on this particular occasion. If there was a screen plugged, the operator would have to spend additional time operating the screen.

Q. But you would say there have been numerous occasions when the screen was plugged?

A. All of them.

Q. All of which Mr. Newsom had nothing to do with?

A. No one has anything to do with the debris that comes in from the sea that plugs the screen.

Q. Did anyone tell you why Mr. Newsom was



(Testimony of Walter S. Zitlaw.)

transferred from Silver Gate to Station B in the fall of 1949? A. No.

Q. You weren't told the reason was to teach Bob Cole the routine at Station B?

A. I was not told that. [382]

\* \* \* \* \*

COSBY M. NEWSOM

a witness recalled by and on behalf of the General Counsel, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. O'Brien): Mr. Newsom, did you hear the testimony yesterday relative to Respondent's Exhibit No. 2? A. Yes, I did.

Q. Did you examine Respondent's Exhibit No. 2? A. I did, sir.

Q. With reference to the errors pointed out by Mr. Warden on Respondent's Exhibit No. 2, I ask you to look at page 1 of that exhibit and explain, if you can, the encircled items?

A. On page 1 of Respondent's Exhibit 2, I see in the column designated "Weekly," the figure 4 circled. That refers to page 2, Item 4, calorimeter. The fact that this is checked on my record, or page 1 of this exhibit, is indication that the work was done. The fact that the work was done and was not recorded on the calorimeter sheet, which is in the exhibit, page 13, is relatively insignificant because I think that this would not show in the

(Testimony of Cosby M. Newsom.)

log. I believe this is the only record of the Silver Gate routine sheet.

The same holds true of the second item 4 in the weekly column with the check mark. In the monthly column, the No. 8, which is circled, refers to page 3, item 8, "Check all alarms."

I believe, while it is stated on page 1 that this item was started on 1-15-51, and not so indicated, the appearance of the figure 8 opposite the number 23 in the margin refers to the day of the month, and is an indication that the work was due to start on the 23rd.

However, from time to time it is necessary for the instrument men to cooperate with the electricians in checking some alarms. It is my belief that on the 15th of January, 1951, the date shown on page 14, the alarm setting record for 1951 is the date the alarms were taken.

I believe that on that date Mr. Merrill contacted me at Silver Gate and asked me to assist him in checking some alarms. On that date I started a routine, or, rather, a rough record of these alarms that I dated that date, and due to the nature of the alarm work, it is a natural to fit it in with other jobs or between other jobs.

In reality, the alarms were taken down at various times during the 15 days. They weren't completed on any particular day and in transcribing from my work sheet to the 1951 alarm setting record, I copied in the date I had begun checking these alarms.

(Testimony of Cosby M. Newsom.)

There is an item circled in the monthly column, the No. 10. Page 3 of the exhibit informs us that it is the calorimeter. It is checked off on the Silver Gate routine sheet as an indication that the routine was done.

On page 13, which is the sheet which is kept of the calorimeter, there under the 29th he has "See 10," and he has circled a place where I omitted a notation on that.

That could have been simply an omission. As a matter of fact, it should have appeared in the daily log for Silver Gate as routine work having been done. I doubt if it appears there either.

Q. Does that complete your explanation of the items on page 1? [386]      A. Page 1, yes.

Q. I now call your attention to pages 3 and 4. According to the testimony of Mr. Warden the work described on page 4 did not require the services of two men?

A. Page 4 of Exhibit 2?

Q. Yes. The names Newt and Fowler appear at the top.

A. This is a two-man job. Page 4 is Fowler's sheet and page 5 is Mr. Newsom's sheet.

Mr. Warden stated in his testimony that this is a one-man job.

\* \* \* \* \*

The Witness: To my knowledge, this is still considered a two-man job and two men are used on the test.

(Testimony of Cosby M. Newsom.)

Trial Examiner Myers: Was it a two-man job in January of this year?

The Witness: The test instructions on this test require readings at ten-minute intervals and it is impossible, practically, for one man to take this amount of reading plus an Orsat reading in ten minutes.

Q. (By Mr. O'Brien): You say the instructions on this particular job. Does that refer to the one that Mr. Warden described that hangs in the instrument room? A. Yes.

Q. You may proceed.

A. My attention was drawn to Page 5 and "Burner No. 1, registered notches open," and "Burner No. 1, position, inches." There is a large circle below the center of the page 5. The settings of the burners in the registers were common. The setting of the No. 1 burner position and notches open of the register is typical of all the burners, and I checked that thoroughly.

It is not too clear here what I should have done, unless write in 16 thirty two times among the squares and 21 thirty two times would have cleared the matter.

Q. With reference to page 6, Mr. Newsom, my notes indicate Mr. Warden said that these tests were made with excess air. I also note here two separate circles made by Mr. Warden.

Do you have an explanation for these three factors?

A. Yes, the upper circle among the data on

(Testimony of Cosby M. Newsom.)

Boiler No. 4, the settings we are instructed to make on the boilers are identical for No. 3 and No. 4. I entered the numbers 13, 14, 12 and 12 for the registers and the burner position was 17 inches. These are also common to both boilers and therefore I did not list them across the page for Boiler No. 4.

However, I made sure the conditions were present at the time of the combustion check. Mr. Warden also mentioned, in relation to the lower circle which encloses a group of figures relating to a percentage, excess air present in the flue gases as found by me in the course of an analysis. I believe he said the excess air was not within the limits as found in the instruction book.

The purpose of these boiler tests is to determine the amount of excess air given under a standard condition of operation, such as steam flow, fuel temperature, burner position and registered setting.

These settings are arrived at during the initial light off of the boiler after an overhaul. The excess air being just enough to insure complete combustion of the fuel and not enough to cause undue heat loss from the stack.

Any deviation from the percent of the excess air required to effect complete combustion of the fuel would mean that the fuel air meters are out of calibration. That is the purpose of these tests, to determine if the meters are in calibration. If they

(Testimony of Cosby M. Newsom.)

are not, that would be the problem of the maintenance man at the station.

Q. With reference to page 7 there were two items circled by Mr. Warden. I believe Mr. Warden also commented that two men were required on the job described on page 7, whereas only one name appears in the upper right-hand corner, "Observer Newt."

Do you have any explanation for those omissions?

A. I believe I do. Mr. Warden is right. There are two men required for these tests. One observer on the turbine floor and another in the basement.

If you look carefully in the upper left-hand corner of this page, under the word "turb," you will see two marks where this sheet had been stapled to another sheet. This is page 7.

The test is only 50 per cent in the exhibit. The other sheet of the test would show Mr. Fowler's figures which would cover the two items circled here, 266.5 and 96 in the extreme right-hand column of the averages.

Trial Examiner Myers: What figures are these?

The Witness: The circled figures, 266.5 and 96 in the right-hand column.

Trial Examiner Myers: These are not your figures?

The Witness: I transcribed them here, but they are from the other sheet of this test and exactly what readings they pertain to they are on the other sheet which has been detached from this sheet.

(Testimony of Cosby M. Newsom.)

Trial Examiner Myers: Where did you get these figures—from Mr. Fowler?

The Witness: Yes.

Trial Examiner Myers: At the risk of belaboring this matter of Psi, the figures 7.6 on page 7 indicate what?

The Witness: 7.6 inches of mercury vacuum, negative pressure. [390]

Trial Examiner Myers: It should have been inches of mercury instead of psi?

The Witness: Under test conditions this is always inches mercury and it is always negative. Why it was printed psi in the first place, I don't know.

Q. (By Mr. O'Brien): Calling your attention to page 8, there are several items circled. Do you have any explanation for these omissions or errors?

A. Looking up in the extreme left-hand corner you can see that this sheet was stapled to another sheet which was taken either by Mr. Shroble or Mr. Fowler. I believe possibly they collaborated on it.

This is also psi, which should have been changed to inches of mercury, negative.

The two other circles in the left-hand corner, the lower left-hand corner, C.W. temperature in and out No. 1 and No. 2 and C.W. No. 1 and No. 2 discharge pressure were readings for which the person in the basement is responsible.

However, with my limited knowledge of the

(Testimony of Cosby M. Newsom.)

plant, I knew immediately upon seeing that this is a Unit II test that the number should have been changed to No. 3 and No. 4, in that order, on this paper.

Trial Examiner Myers: On the left-hand side?

The Witness: Yes.

Trial Examiner Myers: Instead of No. 1 and No. 2, what [391] should it have been?

The Witness: 1 and 2 pertain to Unit I only. It is quite obvious it is C.W. temperature No. 3 and No. 4. Also with the C.W. pump discharge pressure refers to No. 3 and No. 4.

Mr. Fowler or Mr. Shroble were responsible for that.

Q. (By Mr. O'Brien): With regard to page 9, there are numerous circles again. Do you have any explanation for the items called to your attention by Mr. Warden?

A. The first group of figures I see circled are 515 repeated four times across the page. There is also a sheet missing on this test.

Pertaining to these figures 515, that refers to the steam flow at Turbine No. 3 and the unit is 1,000 pounds per hour. We get this reading from a chart.

Q. The chart is on Page 10, which was explained by Mr. Warden.

A. The test instructions for Unit III or any other unit turbogenerator check test are a group of at least four readings at ten-minute intervals.

Referring to the chart, we match our time up.



(Testimony of Cosby M. Newsom.)

We see at 1:00 a rather wide white line. That line was made by the steam flow pen. It seems that the steam flow was bearing about 20,000 pounds an hour. In other words, the pen had a gradual up-and-down motion across the face of the chart.

Now, in taking my readings at ten-minute intervals it is quite possible that when I read these I read where the pen is in relation to the chart at the moment I looked at the chart. When I read that at any position here, covered by the white line, I have no assurance that the pen is going to continue to move and I have no way of knowing at that time it is going to scribe that wide a line.

Sometimes during the course of the test the movement of the pen becomes erratic. Sometimes you must discard the test data because of that. I read the pen at precisely the instant I looked at it and each time I read it the pen was 515.

If my instructions had been to establish test conditions on the unit, to wait for everything to become stabilized and draw from that chart an average of what had been recorded on these charts, I would have certainly arrived at the conclusion that the line drawn here averaged 520.

However, these were not my instructions. As I stated before, my instructions were to read the position of the pen on the chart at ten-minute intervals for 40 minutes.

We have two circles in the lower left-hand corner here. The form is the same. It says here No. 1 and No. 2, C.W. temperature in and out and

(Testimony of Cosby M. Newsom.)

C.W. pump No. 1 and No. 2, discharge pressure.

As in the previous instance, this sheet might be considered obsolete. However, it is obvious to me that in a test on Unit III, the equipment referred to, the temperatures referred to would be the No. 5 and No. 6, and No. 5 and No. 6.

Also, the C.W. pump discharge pressure would be to the C.W. pump 5 and C.W. pump 6.

There is a circle in the average column for the C.W. pump pressures which are a basement reading. The people that handled the basement end of this test was either Mr. Shroble or Mr. Fowler. They either left it blank on their sheet, or not being able to see the other sheet, I am not able to tell what it is. I may have forgotten to transcribe it, however, I doubt that. I believe the gauge on No. 5 reads nothing at this load.

Q. Going back to page 8, there is a long cricle here from the figure 279 down to 249 in the right-hand column.

Mr. Luce: What page is that?

Mr. O'Brien: Page 8.

The Witness: That is a definite error. However, in transcribing the figures from the basement sheet, which is not here attached, in placing the basement sheet over this sheet in order to write the figures in, I imagine I placed this sheet one square too high.

Trial Examiner Myers: You mean these all should have been up one?

The Witness: They should have all been down

(Testimony of Cosby M. Newsom.)

one. You can see the figures 279 on the left-hand side. The figures 279 should jibe with these in the average column. If these two figures jibe, then the rest are in sequence. [394]

Trial Examiner Myers: Who put in the figures 279 and 279 followed by the arrows?

The Witness: We read that once. It is a reading quite distant from the turbine panel and the reading is of the deaerator water and the deaerator vapor temperatures one time during the test. The arrows indicate that they hold true for the other four.

Trial Examiner Myers: Did you discover the error in the transposing of the figures prior to submitting it?

The Witness: The chances are I was called away and it was picked up and put in the file.

Q. (By Trial Examiner Myers): I mean in the left-hand side, the figures 279 and the arrows, then the next figure 279. Do you see what I mean?

A. I put the arrows there.

Q. Why?

A. To point out that the figure 279 is the temperature to consider for the four readings. That is common practice.

Q. I thought you were just indicating that the line should be dropped.

A. No. If I had noticed it, my mistake, I would have erased it and put it in order.

Q. What is the question mark with the circle around it?

(Testimony of Cosby M. Newsom.)

A. That is the condensate flow which is a basement reading. Mr. Fowler and Mr. Shroble did the basement work on this test.

Q. (By Mr. O'Brien): I believe Mr. Warden testified that pages 11 and 12 should be read as a unit. There was something on page 12 he called to our attention and that is the last column with the heading 1-23-51, and underneath the date the name "Webb," which has apparently been erased.

There are numerous other erasures. Tell us what you know about it.

Mr. Luce: Is Mr. O'Brien testifying? I don't believe there is any testimony that there are any other erasures on the page.

Trial Examiner Myers: Strike out the remarks in reference to Mr. O'Brien testifying. Go ahead.

Mr. Luce: Didn't he explain that on direct examination?

Trial Examiner Myers: Go ahead.

Did you put Webb's name in there?

The Witness: No, sir, I did not. I have something to say about this.

Mr. Luce: What page is this?

Mr. O'Brien: Page 12.

The Witness: The column with the designation 6-7 and "Newt" written under it, I was responsible for that column, and also for the column 7-7 and the figures following. It does not appear to me that the figures in the column 1-23-51 are in my hand. Of course, I am not a handwriting expert, but it doesn't seem to me that these figures are in my

(Testimony of Cosby M. Newsom.)

hand. However, I did have a rough work sheet with these figures, or similar figures for the date 1-23-51, for the alarm setting record. Why they are on the 1950 sheet, I do not know, but I do not believe that is my work.

Trial Examiner Myers: Did you put Webb's name in there?

The Witness: I don't believe that is the piece of paper I did that on. This is the smooth log. I don't believe I transcribed these figures in here and I do not believe I put Webb's name in there.

There was some incident about Webb between Shroble and I with the work sheets.

Trial Examiner Myers: Did you erase that?

The Witness: I do not know.

Q. (By Mr. O'Brien): With reference to page 13, I think you have already explained page 13?

A. No, sir, there is one circle here, it says, "See No. 10." That is on page 1, the calorimeter.

Q. I believe you discussed that?

A. No, sir, I don't believe I made the main point on that.

The letter "N" in the row indicates the work that was done, and it is my belief that inasmuch as we had read a standard gas calibration on the instrument within a month or so that Mr. Warden told me to hold off until he got a chance to come down to Silver Gate. That he and I would acquaint Mr. Fowler and Mr. Shroble with the procedure. They were the only two who had not gone through that procedure.

He said, "Hold that open. We will catch it at

(Testimony of Cosby M. Newsom.)

a later date." Mr. Warden said that to me.

Q. With reference to Mr. Warden's criticisms on page 14 and page 15, what do you have to say about that?

A. I believe that was covered when I first discussed page 1. The column under 1-15-51 were written down on a work sheet and the date was merely carried over in transcription. The nature of the taking of the alarm and the manner makes them an ideal. You can check a couple of alarms in 20 minutes, but you can't take a combustion check in 20 minutes. So they were taken throughout the 15 days at various times.

Q. In connection with Mr. Warden's charge that you had a definite measured output, did you ever try to limit your output work when you were working for the San Diego Gas and Electric Company?

A. No, sir.

Q. And did you devise any improved method of doing work in the instrument department?

A. Yes, I have.

Q. Would you name one or two of these?

A. One of these is a system of boiler meter calibration that was devised by me. I believe it was in 1949. That is in extensive use among the instrument technicians at the two plants at this time. It was used exclusively throughout the last overhaul and the men in the instrument department have told me it is excellent.

I have also shown drawings to both station chiefs, and at the time I presented the drawings to them they said, "This is an excellent idea."

(Testimony of Cosby M. Newsom.)

Mr. Zitlaw said to me, "Newt, if there is anything special you need to get this system operating, if there is any special equipment that I can get for you that will hasten this along, just let me know and we will have it in a twinkling."

Q. Did you ever have the job of leadman?

A. No, sir.

Trial Examiner Myers: Were you ever offered the job of leadman?

The Witness: No, sir, I never was.

Q. (By Mr. O'Brien): Do you recall the testimony of several witnesses that you requested a meeting of all instrument technicians so that you could put Mr. Warden on the spot or on the carpet? Do you recall that testimony? A. Yes, I do.

Q. Do you now recall what you did say in that connection?

A. I said, "This does not only concern me, it concerns every man in the department." Due to the fact that we were organizing, therefore, this concerned all of them. I said I would like to have them have a hand in this and be in it from the start. [399]

I asked Mr. Kalins if it would be possible to repeat the little session we had just gone through in the presence of the rest of the fellows as it concerned them very much.

Q. I am not asking you to repeat the testimony. We have been over that a great deal.

Do you recall that you wanted this meeting to put Mr. Warden on the carpet? A. No, sir.

Q. Anything like that? A. No, sir.

(Testimony of Cosby M. Newsom.)

Trial Examiner Myers: Did you make that statement?

The Witness: No, sir, I did not.

Q. (By Mr. O'Brien): Do you recall Mr. Warden's testimony about your being absent for three days without leave? A. Yes, I do.

Q. Did that happen?

Trial Examiner Myers: He said he telephoned to somebody.

The Witness: That was a different instance. At that time I lived a mile and one-half from a telephone.

Trial Examiner Myers: What time was this?

The Witness: It was prior to June, 1950. Just prior to June, 1950, I believe, or around June, 1950. I lived a mile and one-half from a telephone, we had a small child, and my wife did not drive. To my recollection, I was absent two days. Mr. Warden came out to see me and said he was worried about me, asked me when I would be back to work, and I told him the next day. At that time I was sitting in the shade.

Q. (By Mr. O'Brien). Did Mr. Warden have anything to say to you about your absence?

A. No, sir. He said he was glad to hear I was all right and would be back to work the following day.

Q. You heard the testimony about your horse-play at Station B. Was that testimony substantially correct?

A. Well, as I remember, there was and probably always will be horseplay at Station B. Mr. Webb



(Testimony of Cosby M. Newsom.)

and I, I will say, indulged in nothing hazardous or dangerous. We had nothing to do with the sign on the storeroom. I laughed at the time, but so did everyone else.

Trial Examiner Myers: What was on the sign?

The Witness: The sign said—first, I better set the scene. The storeroom is a counter with a wire grill above the top and that lets down so they can secure it at night. It has a slightly cagey atmosphere and the sign said, if I remember correctly, "Please do not feed the animals, they are working for peanuts." I was amused at that.

Q. (By Mr. O'Brien): Did you hear the testimony this morning something with relation to differential gauge and traveling screens?

A. Yes, that was a new installation, and I remember I had some trouble with it. I was relatively new at Silver Gate, and it is a differential meter. In other words, you measure the height of the water before the screens and after the screens, and it was assumed by the instrument manufacturer that the water was going to be clear.

If the screens clog, the water would naturally be higher before the screens than after the screens. In normal operation the water was piling on the other side of the screen and therefore, I moved the zero setting up to two and set the alarm correspondingly at that time.

At that time the meters were not hooked up to automatically start the traveling screens in case they were clogged up. They were merely there as indicators and they did sound the alarm.

(Testimony of Cosby M. Newsom.)

Now, what I did, because of the fact that they were reading a negative, and there was no provision on the chart for negative reading, was to move the zero setting up to what was commonly the two-inch position. I believe I informed Mr. Warden what I had done and he said, "That is as good as we can do now, until we can check the depth of the pipes that are under the water," and we left it at that.

He told me to attach a little sticker to the meters to inform the operators of the fact that two was really the zero position and below two was a negative reading. Above two indicated some clogging of the screens. [402]

That I did and it worked along fine until we were able to iron out the entire situation.

Q. Did Mr. Warden criticize your work in any way on that?           A. No, sir, he did not. \* \* \* \* \*

### Cross Examination

Q. (By Mr. Luce): Mr. Newsom, will you turn to page 1 of Respondent's Exhibit No. 2. Where on the calibration sheet is a corresponding space to enter the figure 4?

A. The check should be entered on the calibration sheet.

Q. Yes. Page 13, is that it?           A. Yes.

Q. Why didn't you check to show the completion of that work on the calibration sheet, page 13 in this exhibit?

A. As I said before, about the Silver Gate routine sheet, this is a sheet that guided my work

(Testimony of Cosby M. Newsom.)

throughout the month. To be perfectly correct I would have recorded it here on the Silver Gate routine check. I would have placed my initial on the calorimeter sheet and I would have also made a note in the log to the effect that the work was done.

Mr. Warden was not requiring me to note this work in the log. He said that the indication here is sufficient enough. He said that is needless repetition.

Q. When did Mr. Warden say that? [403]

A. When we set this routine up, which would be immediately prior to January 15th, 1951.

Q. There was a space that is circled on page 13 for your check mark? A. Yes, there is a place.

Q. The only reason you didn't put the check mark, you say, was because it would be a needless repetition?

A. I don't say it would be needless, but it would be a repetition. There is one record of the work. I could have gone back later and filled these in.

Q. Why didn't you make the check mark?

A. It was probably inconvenient at the time. The door to the cabinet, where the sheets are kept, sticks, and it may or may not have been there. It was used daily by Mr. Shroble and Mr. Fowler, and I had no way of knowing that the sheet was even there.

Q. I understand, then, you don't know whether the sheet was there or not? No, sir.

Q. So you made no effort to make that check on page 13 at that time? A. I did not.

Q. That was because it was inconvenient?

A. No, sir. It was inconvenient, but I had my

(Testimony of Cosby M. Newsom.)

record here on this Silver Gate routine. This is my record, page 1 of your exhibit. There is a check mark there. [404]

Q. Would anybody reading this Sheet No. 13 have known whether you completed the calibration or not?

A. Let me ask you where are the check marks on this page 13 from 1 to 11? Who was taking the daily readings during that time? I don't know whether the work was completed during these months. There is no indication of that on any sheet.

Q. I believe I understood you to say, to be correct, you should have made the checks on page 13?

A. I said that.

Q. And that is correct, is it not?

A. Substantially.

Q. So that No. 13 is not checked because it does not contain the check marks showing the completion of that work?

A. There is quite a bit wrong with sheet No. 13. Shall I tell you what is wrong with it?

Q. I asked you—

Trial Examiner Myers: Was the calibration completed during the month of January, 1951?

The Witness: Yes, it was. The work was done.

Q. (By Mr. Luce): Is not marking it on the calibration sheet, which is No. 13 in this exhibit, part of your job?

A. Keeping records of the work done is part of your job.

Q. Making the entries on page 13 is part of your job?

(Testimony of Cosby M. Newsom.)

A. Yes. Now, as to the figure 8 that is circled—  
Trial Examiner Myers: Is that on page 1?

Mr. Luce: Page 1. [405]

Q. (By Mr. Luce): That was criticized by Mr. Warden because the work was started on the 15th of January, 1951, and wasn't so indicated, is that not true?

A. I believe that is what he said.

Q. What is your explanation as to that?

A. When Mr. Warden drew up the routine, he said "Mr. Newsom, the fact that work is shown on here slated to commence on a certain day is not a hard and fast rule. You will find a day perhaps when, according to your routine sheet, you are supposed to start a turbine test. It may be possible for you to perform this test. It may be impossible for the station chiefs to give you the desired conditions to take the test. Therefore, you must consider this as a rough plan. It is elastic. If you are not able to take care of the turbine test and you have to move it to another day, you are perfectly justified in doing some other work on that day.

"The only thing I want you to do is keep your dates straight as to what was done on what date."

Q. When did Mr. Warden say that to you?

A. He said that to me when he drew up this sheet, and also when he drew up the sheets for the three months routine I handled at both stations some months previously.

Q. Was someone else present?

A. There was no one else present, but it is common sense.

(Testimony of Cosby M. Newsom.)

Q. Are you stating it because it is common sense or because [406] Mr. Warden said it?

A. He said that to me.

Q. Those are his exact words?

A. If I recall, yes, sir.

Q. Do you remember them?

A. I remember them.

Q. You didn't say what date you did the work on, did you?

A. Do you mean the alarms?

Q. Yes, the one that is checked, No. 8. You have No. 8 checked on page 1.

A. It is checked and the figures are also recorded on Unit I, 1951 alarm setting record.

Q. Do you show the date when you did that work?

A. The date heading the column is 1-15-51.

On that date I took the drum level, high and low, reading for Mr. Merrill. Also the steam pressure and the steam temperature readings for Mr. Merrill. I believe the rest was spaced throughout the month from the 15th to the 31st.

Q. Or the 23rd?

A. Possibly I completed all the alarms on the 23rd.

Q. You say possibly? A. I say possibly.

Q. You don't know whether you did or not?

A. I completed that.

Q. You don't know what date? [407]

A. Before February 14th.

Q. Is that the best you can tell us?

Trial Examiner Myers: Where is the corresponding figure to the No. 8, what page of this exhibit?

(Testimony of Cosby M. Newsom.)

The Witness: Do you mean where I entered the work?

Trial Examiner Myers: Yes.

The Witness: The records would be on page 14, the 1951 alarm setting record.

Trial Examiner Myers: Where would it be? Alongside of 23?

The Witness: It would be in the column headed 1-15-51.

Trial Examiner Myers: Where is that?

The Witness: They are all written in order.

Trial Examiner Myers: What is this 23 here on the left-hand side, along with the other numbers, 15, 16, 17, and so forth?

The Witness: Those are days of the month.

Trial Examiner Myers: Where does No. 8 come in? Did you do it on the 23rd day of the month?

The Witness: I did it by the 23rd of the month. I used it as a fill-in job because in assisting the electrician I was forced to start it on the 15th and I let these figures stand.

Trial Examiner Myers: Where did you transpose the figures?

The Witness: On page 15. They run down the page opposite [408] the days.

Trial Examiner Myers: What does Figure 8 mean?

The Witness: Figure 8 refers to page 3. Item 8, page 3 of the exhibit, is "Check all alarms."

Trial Examiner Myers: I see.

Q. (By Mr. Luce): Now, Mr. Newsom, your

(Testimony of Cosby M. Newsom.)

page 1 of the record shows that you did this work, checked the alarms, No. 8 on the 23rd day, is that not correct?      A. Yes, it is checked there.

Q. Then on page 14, you show that you did it on the 15th of January, is that not right?

A. I didn't do it on any particular day.

Q. You entered it on the exhibit on page 14 as though you had done it on the 15th of January.

Trial Examiner Myers: Couldn't all this work on page 14 be completed in one day?

The Witness: Yes.

Trial Examiner Myers: Did you complete all the work in one day?

The Witness: I probably did.

Trial Examiner Myers: To whom does this chart, which is page 14 of Respondent's Exhibit No. 2, go to?

The Witness: That is filed in a notebook called "Records for the Station."

Trial Examiner Myers: It is kept as a permanent record? [409]

The Witness: Yes.

Trial Examiner Myers: In whose custody is it, the station chiefs?

The Witness: No, sir, it is merely in a rack in the instrument engineer's office at Silver Gate.

Trial Examiner Myers: Is that a final and complete chart?

The Witness: Yes.

Trial Examiner Myers: To which everybody can refer when tests have been run?



(Testimony of Cosby M. Newsom.)

The Witness: Yes.

Trial Examiner Myers: What about page 1 of the exhibit, what happens to that paper?

The Witness: It goes into a file.

Trial Examiner Myers: In whose custody?

The Witness: Same station, same file and same office? [410] \* \* \* \* \*

Q. (By Mr. Luce): Mr. Newsom, calling your attention to page 5 of Respondent's Exhibit No. 2, the blank spaces circled there, you say you didn't enter the percentages in there because it would be just a duplication?

A. Yes, I checked that before I entered the 16 and 21.

Q. But at the time when the readings were taken, 10:00, 10:10, 10:20 and 10:30, you say because the readings would be the same it was not necessary to enter them?

A. I say it would not have been any clearer to me had I written 16 down 32 times and 21 down 32 times in order to fill the space up.

Q. I didn't ask you "in order to fill the space up," but shouldn't you have entered the reading at 10:10 in the same manner you did at 10:00?

A. That is not necessarily done. If there had been any change in the burner position or the register setting, I would have noted it.

Q. Will you turn to page 6, please. There are numerous instances on page 6 when you repeated the same figures right across the column from 12:50 to 1:20 when they were the same numbers? [413]

A. What is that, sir?

(Testimony of Cosby M. Newsom.)

Q. Isn't that the proper way to do it, if it is the same figure?

A. The figures here that correspond on the previously mentioned sheet are No. 4 burners; registers, 13, 14, 12 and 12, also burner position 17. I let the one set of figures hold.

Trial Examiner Myers: What the Judge says, for instance, the second line on that page, is 390, 390, 390 and 390.

The Witness: That 390 is a process that is liable to change, therefore, I read it four times at ten-minute intervals.

Trial Examiner Myers: How about on the sixth line, there are figures 227, 227, 227 and 227?

The Witness: Yes, that remained the same, although it is static by nature.

Trial Examiner Myers: The Judge wants to know why, as long as you did that on page 6, you didn't fill in the figures 16 and 21 on page 5. Is that your question, Judge?

Mr. Luce: Yes.

The Witness: Well, the burner position and the registered notches are constant, they are not subject to change without human manipulation. The figures the Judge referred to on page 6 are subject to change without human manipulation.

Q. (By Mr. Luce): Wouldn't your sheet have been incorrect on page 5 unless you did make the entries in there of the [414] readings obtained at the hours mentioned?

(Testimony of Cosby M. Newsom.)

A. The Burner No. 1 position notches open and the register are not readings.

Trial Examiner Myers: Would anybody who is familiar with the sheet, who is familiar with the work done by the instrument men, know what 16 and 21 meant without filling in the rest of the blanks?

The Witness: Yes, that is common practice to do that. [415] \* \* \* \* \*

Q. (By Mr. Luce): Isn't this procedure on this test that one tester is on the floor and the second tester is in the basement? A. Yes.

Q. And the sheets that the testers are using are exactly the same? A. Yes.

Q. And when the test was completed it was your duty to take the test sheet made by Fowler, whoever was in the basement, and write it on your test sheet the figures that he obtained below, is that not correct? A. That is correct.

Q. And average them up in the last column?

A. Yes.

Q. So that if there were any blanks on Fowler's sheet, it would be your duty to correct that by having him place the proper figure there, would it not?

A. I wouldn't ask him to place the proper figure there because he wouldn't have any way of knowing what the proper figure was after the test was over.

Trial Examiner Myers: I guess you didn't understand the question. If Mr. Fowler didn't give you certain figures, the Judge wants to know if it would be your duty to obtain and insert those figures.

(Testimony of Cosby M. Newsom.)

The Witness: Yes, it was my duty to do that.

Q. (By Mr. Luce): Now, the reading after the circle psi 7.6 is not correct, is it? That is, that isn't 7.6 pounds per square inch?

A. That refers to inches of mercury, negative pressure.

Q. It does not refer to pounds per square inch, then? A. It does not.

Q. Why didn't you scratch out the psi and put in inches mercury?

A. It was an oversight. It was also an oversight that it was printed pounds per square inch.

Q. You had a lot of these blanks?

A. Yes.

Q. You knew that it was your duty to scratch out psi and put in inches of mercury?

A. Everyone knows that.

Q. Yes. Now, on page 8, the same thing occurs, does it not, psi 7.6? [417] A. Yes.

Q. That same answer goes to that point on page 8, does it not? A. Yes.

Q. Now, you say that also on page 8 these pump numbers are wrong? A. Yes.

Q. Why weren't they changed?

A. If I recall, I stapled this sheet to the basement sheet and filed these in the Silver Gate file after sending a copy to Mr. Kalins at Station B. That is my belief.

Now, it probably wasn't designated on Mr. Fowler's sheet, which is not present here. It may or may not have been designated.

(Testimony of Cosby M. Newsom.)

Trial Examiner Myers: Well, the point is you should have changed No. 1 and No. 2 to No. 3 and No. 4?

The Witness: Yes, it is obvious.

Trial Examiner Myers: Would the omission of the change confuse anybody who is familiar with these forms or tests?

The Witness: No, anybody connected with Unit II knows that the C.W. pumps are numbered No. 3 and No. 4. Any mechanic or helper in the plant knows that.

Q. (By Mr. Luce): That is your conclusion, is it not? You don't know what the mechanics know and do not know?

Trial Examiner Myers: I believe he could from his [418] experience.

Did you work with these people?

The Witness: Yes, I did.

Trial Examiner Myers: Did I understand you correctly that there is no pump No. 1 or No. 2?

The Witness: There is no C.W. pump 1 or 2.

Trial Examiner Myers: It is designated as No. 3 and No. 4?

The Witness: Yes.

Q. (By Mr. Luce): Are not these sheets used by others than the mechanics and the men in the test department?

A. The sheets are not used by the mechanics at all. They go to my superiors. All of them, as they have testified, but the instrument technician junior

(Testimony of Cosby M. Newsom.)

engineer, concern themselves with the tests of this nature.

Q. Aren't the sheets examined by others than your immediate superiors?

A. I don't believe they get out of the efficiency engineer's scope.

Q. What about pump manufacturers and their representatives? Would they not examine the sheets? A. I don't know.

Q. At the bottom of page 9 there are some blanks circled, and I believe you said they pertain to Mr. Fowler's sheet or the sheet used by the basement man? [419]

A. I would say they did not probably appear on his sheet. If they had appeared on his sheet, I am sure that his sheet would be attached to this and be a part of your exhibit.

Q. Would you have copied them on this Sheet No. 9?

A. I cannot see why I would have left them off.

Q. In other words, what you mean to say is that you would have copied them if they had been on the basement sheet?

A. If they had been on there at the time I copied it, the chances are I would have copied it.

Q. If you noticed the absence or the failure to enter that, would you not have called it to Fowler's attention or had it reread?

A. As I said, the test comprises separate sheets. Everything pertaining to the test was on these two sheets. I probably transcribed everything on these

(Testimony of Cosby M. Newsom.)

two sheets to a third sheet which was the official sheet that went to Mr. Kalins at Station B.

If these two sheets were together, there would be contained all the information necessary to assume——

Q. As a matter of fact, you are not supposed to send a third sheet to Mr. Kalins?

A. I am supposed to send averages of all the readings we take on the turbine tests to Mr. Kalins immediately.

Q. That is a third sheet? [420]

A. I have said a third sheet. I have, at times, sent the first sheet, but when I do that I make sure that all the figures are on both sheets are averaged.

Q. As a matter of fact, the complete test should be on the sheet, page 9, shown here, should they not?

A. No, sir, I wouldn't say it was necessary for the entire test to be on this sheet. It had been stapled to another sheet and it seems to me if this was the top sheet it would appear in the upper right-hand corner the designation of the additional test number.

It is quite possible the figures written up smooth were written on the other sheet.

Q. You yourself wrote the word N-E-W-T?

A. Yes.

Q. Is that supposed to be your signature?

A. Yes.

Q. It means that you have made the test?

A. Yes.

Q. That it is complete? A. Yes.

Q. On page 12 you state that the figures in the

(Testimony of Cosby M. Newsom.)

column under 1-23-51 are or are not in your handwriting?

A. It doesn't look like my hand to me when I compare it to the handwriting in the two adjacent columns.

Q. You know whether the figures are made by you, do you not? [421]

A. I don't believe these figures are mine.

Q. You say that after comparing them with the figures in the column under "C.N." and "Newt"?

A. Yes.

Q. Now, you don't have any recollection about the facts?

A. I have a recollection of taking down these readings on the work sheet. I have no recollection of recording them on the 1950 Unit II alarm setting record. [422]

\* \* \* \* \*



RESPONDENT'S EXHIBIT No. 2

5/

S. G. Routine Jan 57

DATE	weekly	TWICE MONTHLY	MONTHLY				
15		2.5.					
16		1.4.	9. H.				
17			√(S4S)				
18			3.				
19	1-4						
20	-						
21	-						
22			4.7				
23			8.	This item was started on 1-15-57 and not so indicated.			
24			10.				
25							
26	1-4						
27	-						
28	-						
29							
30							
31			5.6.			4 1/2 Quilbed med.	



SILVER GATE  
ROUTINE WORK

WEEKLY WORK:

1. Drain control Air Filters.
2. Take Head Tank samples and send to Sta. B. Lab.
3. Check water test stations.
4. Calorimeter.

Note:

Items 2 & 3 are to be done by  
the regular man at the Station.

SILVER GATE  
ROUTINE WORK

MONTHLY WORK:

- ~~1. Check all valves and stop valves Steam Pressure  
gages on all Turbines.~~
3. Make top load combustion checks on all Boilers  
(after 8 months boiler operation increase checks  
to twice monthly).
4. Check control air reducer operation.
5. Send city water composite to Sta. B. Lab. ✓
6. Take Turbine Lub. Oil samples and send to Sta. B. Lab. ✓
7. Check Sol-u-Bridge. ✓
8. Check all alarms. ✓
9. Turbine Test. ✓
10. Calorimeter. ✓



SILVER GATE  
TYPE RB BOILER CHECK (Sheet 1 of 2)

Date 1-18-51

Observers West/Fowler

Co. 5

		10 <sup>00</sup>	10 <sup>14</sup>	10 <sup>30</sup>	10 <sup>30</sup>				
Water Press	M#/hr	555	554	554	554				
Water Flow (Steam)	Psig	1240	1240	1240	1240				
Water Flow, South	M#/hr	620	620	620	620				
Water Flow (Oil)	#/hr	36	36	36	36				
Water Flow	M#/hr	40	39.5	39.5	40				
Water Final Temp	°F	535	535	535	534				
Water Press Meter	Psig	446	446	446	446				
Water, Final	CF/hr	1900	1900	1900	1900				
Water Flow (Gas)	M#/hr	695	694	694	696				
Water Flow, North	M#/hr	123	121	121	120				
Water Temp, Final	°F	950	950	950	950				
Water in Temp., North	°F	860	860	860	860				
Water Out Temp., North	°F	780	780	780	780				
Water Prehtr., North	°F	844	844	844	844				
Water Prehtr., North	°F	665	665	665	665				
Water Prehtr., North	°F	345	345	345	345				
Water In.	In.	2.8	2.8	2.8	2.8				
Water Prehtr., South	°F	841	841	841	842				
Water Prehtr., South	°F	680	680	680	680				
Water Prehtr., South	°F	356	357	358	358				
Water Prehtr. Out	°F	960	960	960	960				
Water in Temp., South	°F	864	864	864	864				
Water out Temp., South	°F	722	722	722	722				
Control Press, South	Psig	11	11	11	11				
Control Press, South	Psig	2	1	1	1				
Control Press, South	Psig	19	18	18	18				
Control Press, South	Psig	18.5	18.5	18.5	18.5				
Control Press	Psig	12	12	12	12				
Control Press	Psig	18.5	18.5	18.5	18.5				
Control Press	Psig	19	19	19.5	19.5				
Control Press	Psig	19	19	19	19				
Control Press, North	Psig	17.5	17.5	17.5	17.5				
Control Press, North	Psig	17.5	17.5	17.5	17.5				
Control Press, North	Psig	19	19	19	19				
Control Press, North	Psig	4	4	4	4				
Control Press, North	Psig	11	11	11	11				
Diff Press, North	Psig	7	7	7	7				
Control Press, Gage	Psig	1950	1950	1950	1950				
Control Press	Psig	1330	1330	1330	1330				
Control Press, South	Psig	30	30	30	30				
Control Press, South	"h <sub>2</sub> O	+12	+12	+12	+12				
Control Press, South	"h <sub>2</sub> O	+7.5	+7.5	+7.5	+7.5				
Control Press, South	"h <sub>2</sub> O	-4.5	-4.5	4.5	4.5				
Control Press, South	"h <sub>2</sub> O	-6.5	-6.5	6.5	6.5				
Control Press, South	"h <sub>2</sub> O	+2.2	+2.2	2.2	2.2				
Control Press, South	"h <sub>2</sub> O	3.6	2.6	2.6	2.6				









SILVER GATE STATION

Boiler No. 377

BOILER CHECK TEST

Date 1-18-51

Observer *Went*

Time	12 <sup>59</sup>	1 <sup>00</sup>	1 <sup>10</sup>	1 <sup>20</sup>	2 <sup>15</sup>	2 <sup>25</sup>	2 <sup>32</sup>	2 <sup>42</sup>
Steam Flow	300	301	302	302	300	300	300	299
Air Flow	390	390	390	390	364	364	364	364
F.W. Flow	300	302	302	300	393	392	390	390
Water Level	0	0	0	0	0	0	0	0
Gas Flow								
Air Flow	227	227	227	227	219	219	219	219
F.O. Flow	220	220	220	220	219	219	219	219
F.W. Temperature	382	382	382	382	382	382	382	381
F. Gas to Htr. Temp.	805	805	808	808	740	740	740	740
Air from Htr. "	525	525	525	525	538	538	538	538
F. Gas from Htr. "	470	470	470	470	425	425	425	425
Steam Temp. Main	900	900	900	900	900	900	900	905
" " to Attemp.	785	785	780	780	780	780	780	780
" " from Attemp.	705	715	715	710	725	725	725	725
Draft. Air to Htr.	12.9	13	13.2	13.2	15+	15+	15+	15+
" Air from Htr.	10.9	11	11.2	11.	14.6	14.7	14.5	14.5
" Furnace	4.6	4.8	4.3	4	-5+	-5+	-5+	-5+
" Gas to Htr.	4.5	4.4	4.6	4.6	5.4	5.4	5.5	5.3
" Gas from Htr.	8.6	8.3	8.5	8.2	9.1	9.2	9	9.2
F.W. Press	1350	1350	1380	1350	1350	1350	1350	1350
Steam Press. Drum	920	915	912	915	910	910	910	910
" " Orifice	920	920	920	920	875	875	875	878
" " Hdr.	860	860	860	860	860	860	860	860
Control Press. F.W.	15.6	15.6	15.6	15.5	14	14	14	14
" " Attemp.	18	17.5	17.4	18	21.5	21.5	21.5	21.8
" " Gas F.								
" " Oil Fuel	25	25	25	25	23	23	23	23
" " I.D.	21.5	21.5	21.4	21.4	23.4	23.4	23.3	23.3
" " F.D.	22.	22.	22.	22.2	28.5	28.5	28.5	28.5
" " Gas Fuel								
F.O. Press to Burner	250	250	250	250	245	245	245	245
" " from "	440	440	440	440	455	455	455	455
" " Hdr.	275	275	275	275	275	275	275	275
F.O. Temperature	210	210	210	210	216	216	216	216
Gas Press Burner								
" " Orifice								
" " M.N.								
" " Hdr.								
No. Burners	4				4			
Regulators	30.8							
Burner Position	12"							
Conductivity								
CO2	14.2	14	14	14	13	12.8	12.8	12.8
CO2+O2	16.6	16.4	16.6	16.6	17.2	17	17.1	17.2
CO2+O2+CO								
Excess Air	12	12	13	13	21	21	21.5	21

REMARKS:

*Preheater Gas Mid 6.8 6.5 6.6 6.5 7.1 7.1 7.2 7.*

19% O2 12% CO



Respondent's Exhibit No. 2 (Continued)

50-3-51

SLIVER GATE STATION  
TURBO-GENERATOR CHECK TEST

27

DATE 1-16-51

OBSERVER *West*

		✓ 10 <sup>00</sup>	✓ 10 <sup>15</sup>	✓ 10 <sup>30</sup>	✓ 10 <sup>45</sup>		Avg
Mkw		✓ 40	40	40	40		40
Mkvar		✓ 5.3	5.2	5.5	5.4		5.4
Temperature	°C	✓ 62	62	62	62		62
Temperature	°C	✓ 37	37.2	38.2	37.9		37.7
Pressure	in. H2O						53
lyser							98.7
Gas Pressure	in. H2O						26.5
er	in. Hg.	✓ 30.27	30.27	30.27	30.27		30.27
Pressure	in. Hg.	✓ 28.95	28.95	28.95	28.95		28.95
ion Temperature	°F						
Flow, Mtr.	MLb/hr.	✓ 360	360	360	360		360
Temp. Mtr.	°F	✓ 905	905	905	905		905
Press. Mtr.	psi	✓ 847	847	845	848		847
Lean Press.	psi	✓ 852	852	855	855		853
Pre Press.	psi	✓ 579	580	580	580		580
"	psi						460
"	psi	✓ 205	205	205	205		205
"	psi	✓ 102	102	102	102		102
"	psi	✓ 17	17	17	17		17
"	psi	✓ 7.6	7.6	7.6	7.6		7.6
Temperature	°F	✓ 94	94	94	94		94
no #2 Disch. Press.	psi						83
l Temp.	°F						88
Coolers, Temp.	°F						94
Ejector, Temp.	°F						96
P.Htr., Temp.	°F						196.5
for Water Temp.	°F	✓ 260	→				260
for Vapor Temp.	°F	✓ 260	→				260
P.Htr., Temp.	°F						310
P.Htr., Temp.	°F						380
ckage	cfm	LESS THAN		925			-925
r. Drain, Temp.	°F						260.5
r. Drain, Temp.	°F						96
r. Drain, Temp.	°F						145
ate Flow	MLb/hr						285
mp. In #1	°F						381
mp. In #2	°F						70
mp. Out #1	°F						58
mp. Out #2	°F						58
mp. #1 Disch. Press.	psi						72
mp. #2 Disch. Press.	psi						73
mp #1 Disch. Press.	psi						4.55
mp #2 Disch. Press.	psi						3.25
mp #2 Disch. Press.	psi						1210
mp #2 Flow	MLb/hr						358



SLIVER GATE STATION  
TURBO-GENERATOR CHECK TEST

DATE 1-16-51

OBSERVER *Newt*

		12:30	3:00	3:30	3:20	AVG
Mkw		60	60	60	60	60
Mkvar		26	26	25.5	25.5	25.7
Oil Temperature	°C	69	69	70	70.5	69.1
Water Temperature	°C	70.5	70.5	70.5	71	70.6
Oil Pressure	in. H <sub>2</sub> O					1.6
Analyzer	%					95.4
Fire Gas Pressure	in. H <sub>2</sub> O					23.6
Oil Level	in. Hg.	30.27				30.2
Oil Temp	in. Hg.	29.5	29.5	29.5	29.5	29.5
Oil Pressure	in. Hg.					
Oil Temperature	°F					
Oil Flow, Mtr.	MLb/hr.	539	539	539	539	539
Oil Temp. Mtr.	°F	900	900	900	900	900
Oil Press. Mtr.	psi	845	845	848	848	846
Water Press.	psi	851	851	851	851	851
Water Press.	psi	568	568	570	570	869
BRD	psi	506	508	509	509	507.2
"	psi	236	236	237	237	236.1
"	psi	111	111	111	111	111
"	psi	32	32	32.5	32.3	32.2
"	psi	7.5	7.5	7.5	7.5	7.5
Oil Temperature	°F	93	93	93	93	93
Pump #4 Disch. Press.	psi					73
Well Temp.	°F					87
H <sub>2</sub> O Coolers, Temp.	°F					91
Air Ejector, Temp.	°F					94
L.P.Htr., Temp.	°F					279
Generator Water Temp.	°F	279				279
Generator Vapor Temp.	°F	279				328
L.P.Htr., Temp.	°F					396
M.P.Htr., Temp.	°F					
Leakage	cfm	<i>Negligible</i>				279
HTR OUT						
Htr. Drain, Temp.	°F					191
Htr. Drain, Temp.	°F					288
Htr. Drain, Temp.	°F					394
Sensate Flow	MLb/hr					(?)
Temp. In #1	°F					58
Temp. In #2	°F					58
Temp. Out #1	°F					73
Temp. Out #2	°F					72
Pump #1 Disch. Press.	psi					2.5
Pump #2 Disch. Press.	psi					2.6
Pump #6 Disch. Press.	psi					140
Pump #6 Flow	MLb/hr					244
#4 PRESS FLOW		<i>out of service</i>				271



Instrument Exhibit No. 2 (continued)

47

SLIVER GATE STATION  
TURBO-GENERATOR CHECK TEST

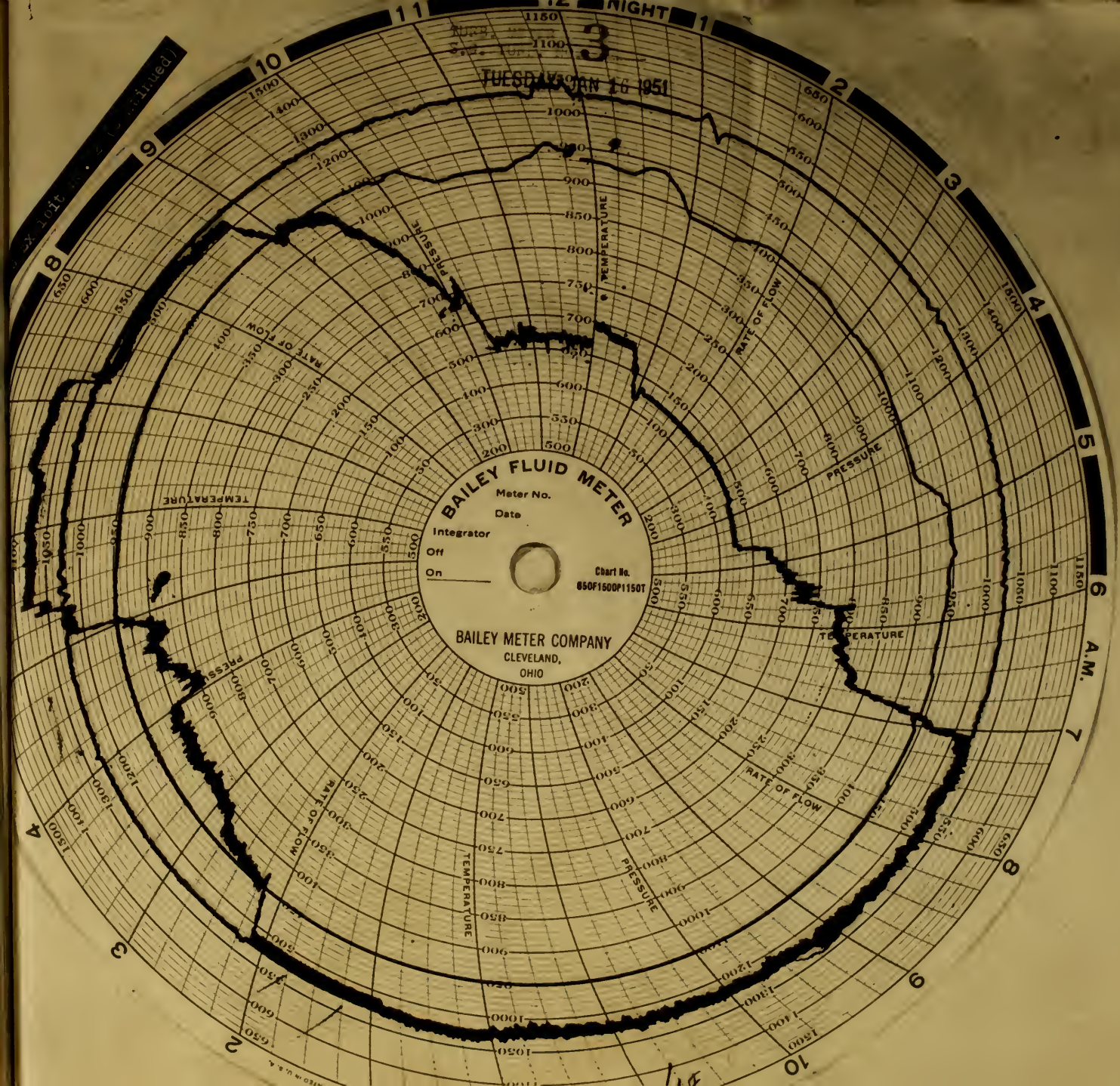
DATE 1-16-51

OBSERVER *Newt*

	1/15	1/23	1/35	1/42	Avg
Mkw	✓ 60	60	60	60	60
Mkvar	✓ 20	20.1	20	20	20
Temperature °C	✓ 56.5	56.5	56.5	56.5	56.5
Temperature °C	✓ 61	61	61	60	61
Pressure in. H2O					1.5
Moisture %					90.1
Gas Pressure in. H2O					30
Pressure in. Hg.	✓ 30.7	→			30.27
Pressure in. Hg.	✓ 29.1	29.1	29.1	29.1	29.1
Temperature °F					
Flow, Mtr. MLb/hr.	✓ 515	515	515	515	515
Temp. Mtr. °F	✓ 948	948	948	948	948
Press. Mtr. psi	✓ 1250	1250	1250	1250	1250
Steam Press. psi	✓ 1252	1252	1252	1252	1252
Cond. Press. psi	✓ 868	868	869	869	868
" " 3RD psi	✓ 590	590	590	590	590
" " psi	✓ 340	340	340	340	340
" " psi	✓ 209	209	209	209	209
" " psi	✓ 80	80	80	80	80
" " psi	✓ 19.3	19.4	19.5	19.4	19.4
Temperature °F	✓ 96	96	96	96	96
" in Hg	-9.5	9.5	9.5	9.4	9.5
No # 5 Disch. Press. psi					72
Temp. °F					88
Coolers, Temp. °F					93
Ejector, Temp. °F					96
P.Htr., Temp. °F					176
Cond. Water Temp. °F	✓ 267	→			267
Cond. Vapor Temp. °F	✓ 264	→			264
P.Htr., Temp. °F					388.5
P.Htr., Temp. °F					435
Escape cfm					<i>negligible</i>
LOW IP HTR					270
LOW IP HTR					325
Drain, Temp. °F					188
Drain, Temp. °F					385
Drain, Temp. °F					437.5
Gate Flow MLb/hr					58
IP DRAIN °F					278
In #1 °F					58
In #2 °F					58
Out #1 °F					75
Out #2 °F					73
#1 Disch. Press. psi					
#2 Disch. Press. psi					
# 7 Disch. Press. psi					2020
# 7 Flow MLb/hr					236
# DISCH PSI					1960
# FLO MLB/HR					259























Alarms Date →	Setting	1-15-51
1. Low Fuel Oil Press.	270"	270
2. " Gas Press MAIN	40"	
3. " " " Std.	16"	
4. High " " "	22"	
5. Low Feedwater Press.	1050"	1050
6. " Control Air	75"	72
7. Low F.O. tank Level #1	2.3	2.3
8. " " " " #2	2.3	2.3
9. " " " " #3	2.3	2.3
10. High " " " #1	10.6	10.8
11. " " " " #2	10.6	10.8
12. " " " " #3	10.6	10.8
13. Low H <sub>2</sub> Press to Gen.	10"	10
14. High " " " "	25"	28
15. Low Steam Press.	850"	840
16. #1 Blk High Steam temp	920°	970
17. #2 " " " "	920°	970
18. #1 " High Drum Level	+3	3
19. #2 " " " "	+3	3
20. #1 " Low " " "	-3	3
21. #2 " " " " "	-3	3
22. Deaerator Make up ON	4.0	4.7
23. " " " OFF	4.2	4.4
24. Conductivity Recorder High	3.5 Mho	3.5
25. H <sub>2</sub> Seal Oil Press. High	14"	14
26. " " " " Low	5"	
27. High Oil Level turb.	107"	
28. Low " " " "	190"	
29. High Exhaust temp. turb.	160°	160
30. Low City water Press.	50"	50
31. " " " Pump on	50"	50
32. H <sub>2</sub> Mach. Gas temp High	40°C	
33. H <sub>2</sub> vac. tank Low	26" Hg	
34. H <sub>2</sub> Mach. (Hi Press open) Gas Press Low	3"	
35. " " " " " High	15"	
36. High Steam temp @ turb.	910°	910
37. High Screen Diff	4	4
38. High Tunnel Diff	2.5	2.5



Unit #2  
Alarm Setting Record  
1951

Date	Spac'd	Set
Alarms		1-23-51
1. Low feedwater Press.	1200#	1210
2. Low Control air Press Blr Rm.	72#	72
3. Low Steam Press.	850#	850
4. #9 Blr. High Steam Press	920#	920
5. #9 " " " Drum Level	920#	970
6. #3 " " " " "	+3"	3
7. #4 " " " " "	+3"	3
8. #3 " Low " " "	-3"	3
9. #4 " " " " "	-3"	3
10. Deaerator Makeup on	5.9'	6.1
11. " " " off	6.3'	6.4
12. Conductivity Recorder High	3#	3.5
13. High H <sub>2</sub> Seal Oil Press. Diff. (turb. end)	8#	
14. Low " " " " "	3#	
15. High exhaust temp turb.	160	
16. High Oil Level turb.		
17. Low " " " " "		
18. High H <sub>2</sub> Gas temp	26"	
19. Low Vacuum tank	8"	
20. High H <sub>2</sub> Press to Gen.	10"	
21. Low " " " " "	6"	
22. Low H <sub>2</sub> Gas Press (Bottle)	14"	
23. High Steam temp turb.	910#	910#
24. High Screen Diff.	4"	4
25. Low F.O. 1700 psi Press	610#	
26. Low H <sub>2</sub> Seal Oil Press. D. PR (Coll. End)	4#	
27. Low Main Seal Oil Press (Starts (Comp. Pump))	35#	
28. Emerg. Seal Oil Pump (Presses Valve #1)	25#	
29. Low Control Air Press. Bsmnt.	75#	75



[Endorsed]: No. 13,525. United States Court of Appeals for the Ninth Circuit. National Labor Relations board, Petitioner, vs. San Diego Gas and Electric Company, Respondent. Transcript of Record. Petition for Enforcement of Order of the National Labor Relations Board.

Filed: September 3, 1952.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

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In the United States Court of Appeals  
for the Ninth Circuit

No. 13525

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

SAN DIEGO GAS AND ELECTRIC CO.,  
Respondent.

PETITION FOR ENFORCEMENT OF AN  
ORDER OF THE NATIONAL LABOR  
RELATIONS BOARD

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V, Secs. 141, et seq.), hereinafter called the Act, respectfully peti-

tions this Court for the enforcement of its Order against Respondent, San Diego Gas and Electric Company, San Diego, California, its officers, agents, successors and assigns. The proceeding resulting in said Order is known upon the records of the Board as "In the Matter of San Diego Gas and Electric Company and Cosby M. Newsom, an Individual," Case No. 21-CA-1029.

In support of this petition the Board respectfully shows:

(1) Respondent is a California Public Utility Corporation engaged in business in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on March 31, 1952, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, San Diego Gas and Electric Company, San Diego, California, its officers, agents, successor and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's Counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board upon which the said Order was entered, which tran-

script includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board, and requiring Respondent, its officers, agents, successors and assigns, to comply therewith.

NATIONAL LABOR RELATIONS  
BOARD

/s/ By A. NORMAN SOMERS,  
Assistant General Counsel.

Dated at Washington, D. C., this 28 day of August, 1952.

[Endorsed]: Filed Sept. 3, 1952. Paul P. O'Brien,  
Clerk.

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[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH  
PETITIONER INTENDS TO RELY

In this proceeding, the petitioner, National Labor Relations Board, will urge and rely upon the following points:

1. The Board's finding that respondent violated

Section 8 (a) (1) of the National Labor Relations Act, as amended, (61 Stat. 136, 29 U.S.C. Supp. V, Section 141 et seq.) by interfering with, restraining and coercing its employees in the exercise of their rights guaranteed by Section 7 of said Act, is supported by substantial evidence and is otherwise proper.

2. The Board's finding that respondent violated Sections 8 (a) (3) and 8 (a) (1) of said Act by discriminatorily discharging employee Cosby M. Newsom is supported by substantial evidence and is otherwise proper.

3. The Board's order is in all respects just and proper and a decree should be entered enforcing said order in full.

Washington, D. C.

/s/ A. NORMAN SOMERS,

Assistant General Counsel.

NATIONAL LABOR RELATIONS  
BOARD

[Endorsed]: Filed Sept. 3, 1952. Paul P. O'Brien,  
Clerk.

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[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH  
RESPONDENT INTENDS TO RELY

In this proceeding, the respondent, San Diego Gas and Electric Company, will urge and rely upon the following points:

1. The Board's finding that respondent violated



Section 8 (a) (1) of the National Labor Relations Act, as amended, (61 Stat. 136, 29 U.S.C. Supp. V, Section 141, et seq.) by interfering with, restraining and coercing its employees in the exercise of their rights guaranteed by Section 7 of said Act, is not supported by substantial evidence and is otherwise improper.

2. The Board's finding that respondent violated Sections 8 (a) (3) and 8 (a) (1) of said Act by discriminatorily discharging employee Cosby M. Newsom is not supported by substantial evidence and is otherwise improper.

3. The Board's findings are contrary to law.

4. The Board's order is not supported by law.

5. The Board is without authority to issue its order herein.

6. The Board has relied upon testimony improperly admitted in evidence in support of its order.

7. The Board has not jurisdiction to issue the order herein involved.

Dated this 10th day of September, 1952.

LUCE, FORWARD, KUNZEL &  
SCRIPPS

/s/ By EDGAR A. LUCE,  
Attorneys for Respondent.

[Endorsed]: Filed Sept. 11, 1952. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

ANSWER OF RESPONDENT

To the Honorable, the Judges of the United States  
Court of Appeals, for the Ninth Circuit:

Comes now the respondent, San Diego Gas & Electric Company, and answers the Petition for Enforcement of an Order of The National Labor Relations Board, heretofore filed herein, as follows, to wit:

(1) Said respondent denies that the respondent did at any of the times referred to in the complaint of Cosby M. Newsom, or in the Intermediate Report and Order of the Trial Examiner herein, or in the decision and order of the petitioner herein, or at any time or place, either interfere with or restrain or coerce any of its employees, or interfere with or restrain or coerce any of its employees in the exercise of any rights guaranteed in Section 7 of the National Labor Relations Act; and respondent further denies that it at any time advised any of its employees that their union or concerted activity placed their job, or any of their jobs in jeopardy; or that it threatened any of its employees with loss of privileges should any such employee persist in union or concerted activity; and further denies that it promised at any time greater benefits to employees, or any of them, or made inducements to cease their union or concerted activity.

(2) Said respondent further denies that it has by any acts discriminated in regard to the tenure of

employment of any employee, or has engaged in any unfair labor practice, within the meaning of Section 8 (a), Subsection (3) of the National Labor Relations Act; and further denies that it has interfered with or coerced any of its employees in the exercise of their rights guaranteed in Section 7 of the said Act; or did thereby engage in any unfair labor practices within the meaning of said Section 8 (a), Subsection (3) of the National Labor Relations Act.

(3) Said respondent further denies that Cosby M. Newsom was discharged by said respondent because of his leadership or participation in the organizational campaign of the instrument technicians employed by said respondent; and further denies that said respondent committed any act of any kind whatsoever or made any threat, or promise, or inducement to prevent or discourage said Cosby M. Newsom from any union activity whatsoever, or from joining any union; and said respondent further denies that it discharged said Cosby M. Newsom in violation of Section 8 (a) (3) and (1) of the National Labor Relations Act; and respondent further denies that it in any way discriminated with respect to the hire and tenure of the employment of said Cosby M. Newsom; and further denies that it interfered with or restrained or coerced any of its employees in the exercise of any rights guaranteed in said Act.

(4) Said respondent further denies that it at any time threatened any of its employees for engaging

in union activity; and further denies that it in any other manner interfered with, restrained or coerced its employee, Cosby M. Newsom, or any other employees, in the exercise of the right to self-organization or to form labor organizations, or to assist the International Brotherhood of Electrical Workers Local Union 465, affiliated with the American Federation of Labor, or any other labor organization.

(5) Said respondent further denies that in the discharge of said Cosby M. Newsom said respondent engaged in any unfair labor act, as set out in said National Labor Relations Act, or in any way violated the said National Labor Relations Act.

(6) Said respondent further alleges that the said Cosby M. Newsom was discharged from his employment with respondent for cause within the meaning of Section 10 (c) of the National Labor Relations Act.

(7) Said respondent denies that the order of the National Labor Relations Board in the proceeding known as "In the Matter of San Diego Gas and Electric Company and Cosby M. Newsom, an Individual", Case No. 21-CA-1029, or the Findings of the said Board, are supported by substantial evidence on the record considered as a whole.

(8) Said respondent further denies that the said petitioner has or had jurisdiction or authority to issue its order referred to in its petition herein.

Wherefore, respondent prays that the said Peti-

tion for Enforcement be denied, and that said respondent have and recover its costs of suit expended herein.

LUCE, FORWARD, KUNZEL &  
SCRIPPS

/s/ By EDGAR A. LUCE,  
Attorneys for Respondent.

Duly Verified.

[Endorsed]: Filed September 15, 1952. Paul P. O'Brien, Clerk.

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Marshal's Civil Case Record No. 4920

CA No. 13525

ORDER TO SHOW CAUSE

United States of America, ss:

The President of the United States of America:  
San Diego Gas and Electric Co., Att: A. E. Hollaway, President, Electric Bldg., San Diego, Calif., and International Brotherhood of Electrical Workers, Local No. 465, A.F.L., Att: George W. Clark, Business Representative, 732 F. Street, San Diego, California.

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10 (e) ), you and each of you are hereby notified that on the 3rd day of September, 1952, a petition of the National Labor Relations Board for enforcement of its order en-

tered on March 31, 1952, in a proceeding known upon the records of the said Board as "In the Matter of San Diego Gas and Electric Company and Cosby M. Newsom, an individual, Case No. 21-CA-1029," and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 3rd day of September in the year of our Lord one thousand, nine hundred and fifty-two.

[Seal]:            /s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

Return on Service of Writ attached.

[Endorsed]: Filed September 16, 1952. Paul P. O'Brien, Clerk.